TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 212. 81

EDWARD M. LINTHICUM, PLAINTIFF IN ERROR,

vs.

ALEXANDER RAY.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MAY 14, 1868.

19.

SUPREME COURT OF THE UNITED STATES.

No. 272.

EDWARD M. LINTHICUM, PLAINTIFF IN ERROR,

vs.

ALEXANDER RAY.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original	Print.
Writ of error	0	1
Bond for writ of error	1	1
Clerk's certificate	2	2
Declaration	2	2
Summons	6	4
Return	7	4
Plea	8	5
Replication	8	5
Proceedings special term	8	5
Bill of exceptions	11	6
Proceedings in general term	79	35

O UNITED STATES OF AMERICA, *ss*:

The President of the United States to the chief justice and justices of the Supreme Court of the District of Columbia, greeting:

Because, in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Edward M. Linthicum, plaintiff, and Alexander Ray, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable S. P. Chase, Chief Justice of the United States, this 13 day of February, in the year of our Lord 1868, and of the independence of the United States the 92d.

[SEAL.] R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To Alexander Ray:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the District of Columbia, wherein Edward M. Linthicum is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done to the parties in that behalf.

Witness D. K. Cartter, chief justice of the Supreme Court of the District of Columbia.

D. K. CARTTER,
Ch'f Justice.

Service acknowledged.
Feb'y 13, 1868.

WALTER S. COX,
Of Counsel for Def't in Error.

1 EDWARD M. LINTHICUM
v.
ALEXANDER RAY.

Know all men by these presents that we, Edward M. Linthicum and Josiah Dent, are held and firmly bound unto the said Alexander Ray

in the sum of two hundred dollars, to be paid to said Alexander Ray, his heirs, executors, or administrators, to which payment, well and truly to be made, we bind ourselves jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Witness our hands and seals this 13th day of February, A. D. eighteen hundred and sixty-eight.

The condition of the above obligation is such, that whereas the said Edward M. Lintichum has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled cause by the Supreme Court of the District of Columbia:

Now therefore, if the above-named Edward M. Linthicum shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[SEAL.] E. M. LINTHICUM.
[SEAL.] JOSIAH DENT.

Witnesses—
W. F. SEYMOUR.
B. F. WADDY.

The within bond is hereby approved, this 13th day of Feb., 1868.
D. K. CARTTER,
Ch'f Justice.

2 DISTRICT OF COLUMBIA, *to wit*:

I, Return J. Meigs, clerk of the Supreme Court of the District of Columbia, certify that the originals, of which the following are true and complete copies, are on file and of record in the clerk's office of said court, and that said originals, together, constitute the record of the proceedings of said court in a certain cause therein lately depending and decided, entitled Edward M. Linthicum *v.* Alexander Ray, No. 1887, at law, to wit:

In the Supreme Court of the District of Columbia, the 12th day of September, 1865.

Narr.—Filed Sept. 12th, '65.

EDWARD M. LINTHICUM
v.
ALEXANDER RAY. } Case at law, No. 1887.

Edward M. Linthicum complains of Alexander Ray in a plea of trespass on the case. Whereas, on the first day of July, A. D.
3 1865, the plaintiff was, and still is, possessed, as owner in fee simple, of a certain lot or messuage of land, situated on the

north side of Water street, and fronting thereon about twenty feet, between Market and Frederick streets, in the city of Georgetown, in the county of Washington, and district aforesaid, and by reason thereof was, and still is, entitled to a right of way from said Water street into and over a certain other lot or messuage of land belonging to said defendant, and situated on the south side of said Water street, about opposite to the lot of the plaintiff as aforesaid, unto a certain wharf, dock, or quay of said defendant, on the Potomac river, in the city of Georgetown aforesaid, embracing water lots 38, 39, and 40, and to the free and unobstructed use and privilege, equally with said defendant, of said way, and of the wharf, dock, or quay aforesaid, for himself and his servants, at his and their pleasure. at any and all times, on foot and with horses, carts, drays, wagons, or other vehicles, freely and without charge or toll, to enter on, go and return, pass and repass, for the purpose, from time to time, of moving his ships or vessels, for lading and unlading the same, and for shipping and receiving all goods, wares, and merchandize,
4 and all other articles of trade whatever, imported or exported by the plaintiff. Yet the said defendant, well knowing the premises, but maliciously and wrongfully intending and continuing to injure the plaintiff in that behalf, on the day and year aforesaid, at the county aforesaid, suited and placed, or caused to be suited and placed, a wooden fence and other obstructions across and on said way and warf or quay, and though requested to remove said fence and other obstructions, still continues to maintain the same, whereby said plaintiff is completely and entirely hindered and deprived of his way to, and also of his use and privilege of, the wharf, dock, or quay as aforesaid, to the damage of plaintiff five thousand dollars.

And whereas the plaintiff, on the day and year aforesaid, by virtue of a certain grant, deed, or instrument of writing, was, and still is, entitled to a certain right of way from Water street, in the city of Georgetown aforesaid, into. on, and over a certain lot or messuage of land belonging to said defendant, embracing water lots 38, 39, and 40, unto a certain wharf, quay, or dock of said defendant, situated on the Potomac river, on the south side. of Water street, between Market and Frederick streets, in the city of George-
5 town, in the county and district aforesaid, and to the free and unobstructed use and privilege of said way and wharf or quay as aforesaid, equally with said defendant, for himself and his servants, at his and their pleasure, at any and all times. on foot and with horses, carts, drays, wagons and other vehicles, freely and without charge or expense, to enter, go, and return, pass and repass, to and from said wharf or quay, for the purpose, from time to time, of moving his ships or vessels, for lading and unloading the same, and for shipping and receiving all goods, wares, and merchandize, and all articles of trade whatever, imported or exported by plaintiff. Yet the said defendant, well knowing the premises, but maliciously and wrongfully intending and contriving to injure the plaintiff in this behalf, on the day and year aforesaid, at the county aforesaid, and at divers other times before and since that time, erected and placed,

or caused to be erected and placed, a wooden fence and other obstructions across and on said way and wharf or quay as [as] aforesaid, and though requested to remove said fence and obstructions, refused to do so, and still continues to maintain the same, whereby the
6 plaintiff is entirely and completely hindered and deprived of his way to, and of his use and privilege of, the wharf, quay, or dock as aforesaid, to the damage of the plaintiff five thousand dollars; and therefore he brings his suit.

BRADLEY & BRADLEY,
For P'l'ff.

The defendant is to plead hereto on or before the first special term of the court occurring twenty days after service hereof, otherwise judgment.

B. & B.

In the Supreme Court of the District of Columbia, the 12th day of Sept., 1865.

EDWARD M. LINTHICUM, plaintiff,
v.
ALEXANDER RAY, defendant.
} At law.—No. 1,887.

Summons.—Issued Sept. 12, 1855.

The President of the United States to the marshal for said district, greeting:

Summons the defendant in the above-entitled case to appear in said court on or before the first special term thereof, occurring twenty days after service of this writ, and answer the declaration herewith served, and warn him that on default of so
7 doing the plaintiff may proceed to judgment and execution at the trial term of said court next after said service; and do you return this writ into the clerk's office immediately after service, so indorsed as to show the time and manner of executing it; and if you cannot serve it within six months, the day of its issuance exclusive, then return it into said office for renewal.

Witness D. K. Cartter, chief justice of said court.

B. & B.
R. J. MEIGS, *Clerk.*

NOTE.—That the special terms of the court commence on the first Tuesday of every month except May, in which month they commence on the third Monday, and August, in which month there is no term of the court, and that the trial terms of the court commence on the first Tuesday of February, third Monday of May, and first Tuesday of November, when final judgments may be taken and execution awarded.

Marshal's return.

Served copy of summons and declaration on deff't, Sept. 14, 1865.

D. S. GOODING, *Marshal.*

8 In Supreme Court of District of Columbia.

Defendant's plea.—Filed Dec. 3d, 1865.

E. M. LINTHICUM
v.
ALEX'R RAY. } 1,887, at law.

The defendant for plea says he is not guilty.

DAVIDGE & COX.

Supreme Court, D. C.

Replication.—Filed Oct. 9, 1865.

LINTHICUM
v.
RAY. } No. 1,887.

The plaintiff joins issue upon the defendant's plea.

BRADLEY & BRADLEY,
For Pl't'ff.

Oct. 19, 1865.

Proceedings before the Supreme Court of the District of Columbia, holding a special term and Circuit Court for said District, commencing the first Tuesday, 6th day of November, 1866.

TUESDAY, *November* 6, 1866.

The court commences the term by proclamation by the marshal, upon order of Cartter, chief justice, at 10 o'clock a. m.

9 THURSDAY, *January* 17, 1867.

The court resumes its session, according to adjournment. Chief Justice Cartter presiding.

EDWARD M. LINTHICUM, pl'ff,
v.
ALEXANDER RAY, def't. } 1,887, law, 67 cal.

Come as well the plaintiff, by his attorneys, Messrs. Bradleys, as the defendant, by his attorneys, Messrs. Davidge & Cox, and a jury of good and lawful men of this district, to wit: Terence Drury, James Ginnaty, Joseph B. Moore, Charles A. Wall, Leonard O. Cook, Henry G. Davis, Charles T. Smith, Richard A. Hyde, William H. Arnold, Louis Marceron, James Thompson, and George G. Durham, who, being sworn to try the issue above joined, are respited till the meeting of the court to-morrow.

or caused to be erected and placed. a wooden fence and other obstructions across and on said way and wharf or quay as [as] aforesaid, and though requested to remove said fence and obstructions, refused to do so, and still continues to maintain the same, whereby the
6 plaintiff is entirely and completely hindered and deprived of his way to, and of his use and privilege of, the wharf, quay, or dock as aforesaid, to the damage of the plaintiff five thousand dollars; and therefore he brings his suit.

BRADLEY & BRADLEY,
For P'l'ff.

The defendant is to plead hereto on or before the first special term of the court occurring twenty days after service hereof, otherwise judgment.

B. & B.

In the Supreme Court of the District of Columbia, the 12th day of Sept., 1865.

EDWARD M. LINTHICUM, plaintiff,
v.
ALEXANDER RAY, defendant.
} At law.—No. 1,887.

Summons.—Issued Sept. 12, 1855.

The President of the United States to the marshal for said district, greeting:

Summons the defendant in the above-entitled case to appear in said court on or before the first special term thereof, occurring twenty days after service of this writ, and answer the decla-
7 ration herewith served, and warn him that on default of so doing the plaintiff may proceed to judgment and execution at the trial term of said court next after said service; and do you return this writ into the clerk's office immediately after service, so indorsed as to show the time and manner of executing it; and if you cannot serve it within six months, the day of its issuance exclusive, then return it into said office for renewal.

Witness D. K. Cartter, chief justice of said court.

B. & B.
R. J. MEIGS, *Clerk.*

NOTE.—That the special terms of the court commence on the first Tuesday of every month except May, in which month they commence on the third Monday, and August, in which month there is no term of the court, and that the trial terms of the court commence on the first Tuesday of February, third Monday of May, and first Tuesday of November, when final judgments may be taken and execution awarded.

Marshal's return.

Served copy of summons and declaration on deff't, Sept. 14, 1865.

D. S. GOODING, *Marshal.*

8 In Supreme Court of District of Columbia.

Defendant's plea.—Filed Dec. 3d, 1865.

E. M. LINTHICUM
v.
ALEX'R RAY. } 1,887, at law.

The defendant for plea says he is not guilty.

DAVIDGE & COX.

Supreme Court, D. C.

Replication.—Filed Oct. 9, 1865.

LINTHICUM
v.
RAY. } No. 1,887.

The plaintiff joins issue upon the defendant's plea.

BRADLEY & BRADLEY,
For Pl't'ff.

Oct. 19, 1865.

Proceedings before the Supreme Court of the District of Columbia, holding a special term and Circuit Court for said District, commencing the first Tuesday, 6th day of November, 1866.

TUESDAY, *November* 6, 1866.

The court commences the term by proclamation by the marshal, upon order of Cartter, chief justice, at 10 o'clock a. m.

9 THURSDAY, *January* 17, 1867.

The court resumes its session, according to adjournment. Chief Justice Cartter presiding.

EDWARD M. LINTHICUM, pl'ff,
v.
ALEXANDER RAY, def't. } 1,887, law, 67 cal.

Come as well the plaintiff, by his attorneys, Messrs. Bradleys, as the defendant, by his attorneys, Messrs. Davidge & Cox, and a jury of good and lawful men of this district, to wit: Terence Drury, James Ginnaty, Joseph B. Moore, Charles A. Wall, Leonard O. Cook, Henry G. Davis, Charles T. Smith, Richard A. Hyde, William H. Arnold, Louis Marceron, James Thompson, and George G. Durham, who, being sworn to try the issue above joined, are respited till the meeting of the court to-morrow.

FRIDAY, *January* 18, 1867.

The court resumes its session according to adjournment.
Chief Justice Cartter presiding.

EDWARD M. LINTHICUM, pl't'ff,
v.
ALEXANDER RAY, def't. } 1,887 law; 67 cal.

And now again come here the parties aforesaid, by their attorneys aforesaid, and the same jury, who were respited yesterday, and the said jury are again respited till ten o'clock to-morrow.

SATURDAY, *January* 19, 1867.

The court resumes its session according to adjournment.
Chief Justice Cartter presiding.

EDWARD M. LINTHICUM, p't'ff,
v.
ALEXANDER RAY, def't. } 1,887, law; 67 cal.

And now again come here the parties aforesaid, by their attorneys aforesaid, and the same jury who were respited yesterday, and the said jury, after receiving the instructions of the court, upon their oath say, that they find the said issue in favor of the defendant.

MONDAY, *April* 29, 1867.

The court resumes its session according to adjournment.
Chief Justice Cartter presiding.

EDWARD M. LINTHICUM, pl't'ff,
v.
ALEXANDER RAY, def't. } 1,887; law.

The defendant, by his said attorneys, comes here now, and prays judgment upon the verdict aforesaid, and thereupon it is considered by the court that the plaintiff take nothing by his suit, and that the defendant go thereof without day and recover against the plaintiff $44\frac{20}{100}$ for the costs of his defence, and that he have execution thereof.

In the Supreme Court of the District of Columbia.

Bill of exceptions.

EDWARD M. LINTHICUM
v.
ALEXANDER RAY. } No. ; at law.

On the trial of this cause the plaintiff, to maintain the issue on his part joined, offered and read in evidence, without objection, the deeds following:

[Copy.]

12 *Deed from Francis & Charles Lowndes to Jno. Templeman.*

This indenture, made this twenty-ninth day of April, in the ye r eighteen hundred, between Francis Loundes and Charles Loundes, Georgetown, Montgomery county, and State of Maryland, of the one part, and John Templeman, of town, county, and State aforesaid, witnesseth, that whereas the said John Templeman has at the request of Francis Loundes and Charles Loundes endorsed certain negotiable notes in the Bank of Columbia, for the sum of nine thousand four hundred and fifty dollars, payable in fifty-five days after date, of which Francis Loundes, Charles Loundes, and John Suter are the drawers; and whereas he, the said Templeman, may hereafter endorse certain other negotiable paper, drawn by the said Francis Loundes, Charles Lowndes and John Suter, and whereas the said Lowndes are anxious to indemnify the said Templeman from all damages which he may sustain in consequence of endorsements already made or which may at any time hereafter be made by him upon account of said Francis Loundes, Charles Loundes, and John Suter as aforesaid: Now this indenture witnesseth that the said Francis Loundes and Charles
13 Loundes, for and in consideration of the premises as well as for and in consideration of the sum of five shillings, current money to them in hand paid, on or before the ensealing and delivery of these presents, the receipt thereof is hereby acknowledged, have given, granted, bargained, sold, assigned, transfered and set over, and by these presents do give, grant, bargain, sell, assign, transfer, and set over unto the said John Templeman, his heirs and assigns for ever, all and singular the hereinafter described property; that is to say, all their right, title, claim, and interest to a three-story brick warehouse, and part of lot number thirty-five lying on Water street, in Georgetown, together with the wharf in front of said house, which house, wharf, and part of lot No. thirty-five, they, the said Francis Lowndes and Charles Lowndes, sold to General Walter Stewart, in the year one thousand seven hundred and ninety-four, but have not conveyed, reference to the agreement between the said Francis Loundes, and Charles Loundes, and Walter Stewart, will more fully explain; also the three-story brick warehouse on Water street, nearly adjoining the above-mentioned house, on the east end,
14 together with that part of lot number thirty-eight on which it stands, and at present occupied by the said Francis Lowndes and Charles Lowndes, together with all and singular the buildings, rights, privileges, and appurtenances thereto belonging, or in any manner, wise, appurtaining; to have and to hold the said bargained property and its appurtenances unto him, the said John Templeman, his heirs, and assigns forever; in trust nevertheless, and for the uses following, that is to say, that he, the said John Templeman, his heirs, and assigns, executors, or administrators shall and will, and may from time to time, after giving five public days' notice, sell and dispose of, for cash or otherwise, as they may think proper, the said property, so as to enable the said John Templeman, his ex-

ecutors, or administrators, to pay in bank the said notes, which the said Templeman has endorsed, or any notes which he may hereafter endorse upon account of the said Francis Loundes, Charles Loundes, and John Suter, or either of them, or which shall not be taken up by the said Frances Lowndes, Charles Lowndes, or John Suter, their executors, or administrators, at the periods at which they may respectively become due, and that then, after he is fully indemnified for the said endorsement, the residue of the said property or its proceeds to revert to and be for the uses of the said Francis Loundes and Charles Lowndes, their heirs and assigns.

In witness whereof the said Francis Loundes and Charles Loundes have hereunto set their hands and seals the day and year above written.

[SEAL.] FRANCIS LOWNDES.
[SEAL.] CHARLES LOWNDES.

Signed, sealed, and delivered in presence of—
JOSEPH FORREST.
THOMAS CORCORAN.

STATE OF MARYLAND, *Montgomery County, sct*:

On this twenty-ninth day of April, in the year eighteen hundred, Francis Lowndes and Charles Lowndes, the grantors named in the aforesaid instrument of writing, personally appeared before us, the subscribers, two justices of the peace for the county aforesaid, and acknowledged the said instrument of writing to be their act and deed, delivered for the purposes therein mentioned, acknowledged before Joseph Forrest, Thomas Corcoran. Recorded the 10th day of October, 1800.

I, Nathaniel C. Towle, register of deeds for the county of Washington and District of Columbia, hereby certify that the foregoing and annexed is a true copy of a deed or instrument of writing from Francis Lowndes and Charles Lowndes to John Templeman, as recorded in liber E., No. 5, folios 381, 382, and 383, one of the land records for said county.

Given under my hand and official seal this 4th day of October, A. D. 1864.

[SEAL.] N. C. TOWLE, *Register.*

[5-cent rev. stamp, cancelled.]

[Copy.]

Deed.—Francis and Charles Lowndes to Richard & Leon H. Johns.

At the request of Richard and Leon H. Johns, the following deed was recorded the eleventh day of February, eighteen hundred and four:

This indenture, made this fourteenth day of January, in the year of our Lord one thousand eight hundred and four, between Francis

Lowndes and Charles [Charles] Lowndes, of the county of Washington and District of Columbia, of the one part, and Richard Johns and Leonard Holleday Johns, of the county and district aforesaid of the other part. Whereas the said Charles Lowndes, although not entitled to the hereinafter first-described property, yet is in and to the wharf the privilige of using which is hereinafter intended
17 to be granted to the said Richard Johns and Leonard H. Johns, and particularly described, for which purpose he is made a party to this deed; now this indenture witnesseth, that the said Francis Lowndes and Charles Lowndes, for and in consideration of the sum of seven hundred dollars, money of the United States to them in hand paid by the said Richard Johns and Leonard the receipt whereof they do hereby acknowledge, have a them hath given, granted, bargained, and sold, and by t ents do, and each of them doth give, grant, bargain, an them, the said Richard Johns and Leonard H. Johns, as common, and not as joint tenants, all [that part of lot or ground situate, lying, and being in Georgetown county, a aforesaid, fronting on west landing,] beginning at the southwest corner of the said Francis Lowndes' brick warehouse, now occupied by the said Richard Johns and Leonard H. Johns, and running from thence westwardly with the north side of west landing, twenty feet three inches to the southeast corner of the brick warehouse the property of the said Francis Lowndes, lately occupied by Lewis
18 De Blois; thence northwardly and at right angles with west landing, one hundred and eighty-seven feet, to a new street laid off by the said Francis Lowndes, called Pitt's street; thence east with said street, twenty-two feet to intersect a line drawn northwardly from the beginning, and parallel to the second line above mentioned; thence with said parallel to the beginning, together with all and singular the buildings, improvements, rights, priviliges, immunities, and appurtenances thereunto belonging, or in anywise appertaining, to have and to hold the said parcel or portion of ground as above bounded and described, with all and singular the buildings, improvements, rights, immunities, priviliges, and appurtenances thereunto belonging, or anywise appertaining unto the said Richard Johns and Leonard H. Johns, their heirs and assigns, as tenants in common, and not as joint tenants, and to no other use, intent, or purpose whatsoever; and they the said Francis Lowndes and Charles Lowndes do hereby also grant unto the said Richard Johns and [and] Leonard H. Johns, their heirs and assigns, the priviliges and right of using the wharf built by the said Francis and Charles Lowndes,
19 fronting one hundred and one feet or thereabouts on the river Potomac, free of all expense, for the purpose, from time to time, of moving their ships or vessels, and for lading and unlading the same, and on all goods, wares, and merchandizes; and also on all articles of trade and commerce whatsoever imported or exported by them; the said wharf is the same nearly opposite to the said brick warehouse now occupied by the said Richard Johns and Leonard H. Johns, and contained within the lines of the piece of ground

ecutors, or administrators, to pay in bank the said notes, which the said Templeman has endorsed, or any notes which he may hereafter endorse upon account of the said Francis Loundes, Charles Loundes, and John Suter, or either of them, or which shall not be taken up by the said Frances Lowndes, Charles Lowndes, or John Suter, their executors, or administrators, at the periods at which they may respectively become due, and that then, after he is fully indemnified for the said endorsement, the residue of the said property or its proceeds to revert to and be for the uses of the said Francis Loundes and Charles Lowndes, their heirs and assigns.

In witness whereof the said Francis Loundes and Charles Loundes have hereunto set their hands and seals the day and year above written.

[SEAL.] FRANCIS LOWNDES.
[SEAL.] CHARLES LOWNDES.

Signed, sealed, and delivered in presence of—
JOSEPH FORREST.
THOMAS CORCORAN.

STATE OF MARYLAND, *Montgomery County, sct*:

On this twenty-ninth day of April, in the year eighteen hundred, Francis Lowndes and Charles Lowndes, the grantors named in the aforesaid instrument of writing, personally appeared before us, the subscribers, two justices of the peace for the county aforesaid, and acknowledged the said instrument of writing to be their act and deed, delivered for the purposes therein mentioned, acknowledged before Joseph Forrest, Thomas Corcoran. Recorded the 10th day of October, 1800.

I, Nathaniel C. Towle, register of deeds for the county of Washington and District of Columbia, hereby certify that the foregoing and annexed is a true copy of a deed or instrument of writing from Francis Lowndes and Charles Lowndes to John Templeman, as recorded in liber E., No. 5, folios 381, 382, and 383, one of the land records for said county.

Given under my hand and official seal this 4th day of October, A. D. 1864.

[SEAL.] N. C. TOWLE, *Register.*

[5-cent rev. stamp, cancelled.]

[Copy.]

Deed.—Francis and Charles Lowndes to Richard & Leon H. Johns.

At the request of Richard and Leon H. Johns, the following deed was recorded the eleventh day of February, eighteen hundred and four:

This indenture, made this fourteenth day of January, in the year of our Lord one thousand eight hundred and four, between Francis

Lowndes and Charles [Charles] Lowndes, of the county of Washington and District of Columbia, of the one part, and Richard Johns and Leonard Holleday Johns, of the county and district aforesaid of the other part. Whereas the said Charles Lowndes, although not entitled to the hereinafter first-described property, yet is in and to the wharf the privilige of using which is hereinafter intended
17 to be granted to the said Richard Johns and Leonard H. Johns, and particularly described, for which purpose he is made a party to this deed; now this indenture witnesseth, that the said Francis Lowndes and Charles Lowndes, for and in consideration of the sum of seven hundred dollars, money of the United States to them in hand paid by the said Richard Johns and Leonard H. Johns, the receipt whereof they do hereby acknowledge, have and each of them hath given, granted, bargained, and sold, and by these presents do, and each of them doth give, grant, bargain, and sell unto them, the said Richard Johns and Leonard H. Johns, as tenants in common, and not as joint tenants, all [that part of lot or portion of ground situate, lying, and being in Georgetown county, and District aforesaid, fronting on west landing,] beginning at the southwest corner of the said Francis Lowndes' brick warehouse, now occupied by the said Richard Johns and Leonard H. Johns, and running from thence westwardly with the north side of west landing, twenty feet three inches to the southeast corner of the brick warehouse the property of the said Francis Lowndes, lately occupied by Lewis
18 De Blois; thence northwardly and at right angles with west landing, one hundred and eighty-seven feet, to a new street laid off by the said Francis Lowndes, called Pitt's street; thence east with said street, twenty-two feet to intersect a line drawn northwardly from the beginning, and parallel to the second line above mentioned; thence with said parallel to the beginning, together with all and singular the buildings, improvements, rights, priviliges, immunities, and appurtenances thereunto belonging, or in anywise appertaining, to have and to hold the said parcel or portion of ground as above bounded and described, with all and singular the buildings, improvements, rights, immunities, priviliges, and appurtenances thereunto belonging, or anywise appertaining unto the said Richard Johns and Leonard H. Johns, their heirs and assigns, as tenants in common, and not as joint tenants, and to no other use, intent, or purpose whatsoever; and they the said Francis Lowndes and Charles Lowndes do hereby also grant unto the said Richard Johns and [and] Leonard H. Johns, their heirs and assigns, the priviliges and right of using the wharf built by the said Francis and Charles Lowndes,
19 fronting one hundred and one feet or thereabouts on the river Potomac, free of all expense, for the purpose, from time to time, of moving their ships or vessels, and for lading and unlading the same, and on all goods, wares, and merchandizes; and also on all articles of trade and commerce whatsoever imported or exported by them; the said wharf is the same nearly opposite to the said brick warehouse now occupied by the said Richard Johns and Leonard H. Johns, and contained within the lines of the piece of ground

contracted to be conveyed the said Francis and Charles Lowndes by Charles Beatty; that is to say, as to the easterly forty-one feet; the said Lowndes possessing only an uncertain interest grant as to that part thereof, only the same kind of interest, and promise, and covenant to procure, if they can, the certain interest in the same; and as to the westerly sixty feet, fronting as aforesaid, they, the said Lowndes, hereby covenant and agree to and with the said Johns, that they, the said Johns, their heirs, and assigns shall, whenever they may hereafter have occasion and use for the same, have and enjoy freely, quietly, peaceably, and uninterruptedly the free use and priviliges of the said last-mentioned sixty feet of the said wharf
20 fronting as aforesaid, for the purposes as aforesaid, against all manner of persons and claims whatsoever, except as to the said Francis and Charles Lowndes, themselves for their own vessels and goods, and as to them it is covenanted and agreed that their said vessels or goods shall not remain or continue at or on the said wharf longer than a reasonable length of time for lading or unlading or being taken away at any time, when said wharf may be actually wanted to be used by the said Richard and Leonard H. Johns; and this exception, as to their own vessels or goods, to be understood to be only in case their said vessels or goods shall be at or on the said wharf from time to time, in point of time first. It is also understood that the said Johns shall not at any time or times use the said wharf an unnecessary or unreasonable length of time with their ships, vessels, or goods to be regulated by the nature of the articles landed or the circumstances of the case, thereby to prevent the said Lowndes from the use thereof, and the said Francis Lowndes, for himself, his heirs, and assigns, doth by these presents covenant, grant, and agree
21 to and with the said Johns, their heirs and assigns, that he, the said Francis Lowndes, will permit them, if at any time hereafter they may desire, in building, to join their walls to the two brick houses belonging to the said Francis Lowndes, the one now occupied by the said Messrs. Johns, and the other lately occupied by Lewis DeBlois, without expense or charge by the said Lowndes. And the said Francis Lowndes, for himself, his heirs, executors, and administrators hereby covenants and agrees to and with the said Johns, the said first hereinafter described piece of ground and premises with the appurtenances unto them the said Johns, their heirs, and assigns, to warrant and forever defend from and against all persons and claims whatever; and that he and they will from time to time and at all times hereafter, at the reasonable request and proper cost and charge in the law of them the said Johns, their heirs or assigns, make, execute, and duly acknowledge any other and further act or acts, deed or deeds for the more effectually securing and assuring the premises aforesaid, with the appurtenances according to the true intent hereof.

22 In testimony whereof the said parties aforesaid have hereto set their hands and seals the day and year first aforesaid. It is not intended by the above deed that the said Lowndes shall at all events be compelled to procure the certain interest in the forty-one

feet of ground in the said deed mentioned, but it is understood that the certain interest therein mentioned shall be procured by them when it can be done on reasonable and proper terms.

[SEAL.] CHAS. LOWNDES.
[SEAL.] FRANCIS LOWNDES.
LEONARD H. JOHNS,
[SEAL.] For R. & L. H. JOHNS.

Signed, sealed, and delivered in presence of—
THOS. CORCORAN.
JOHN OAKLY.

DISTRICT OF COLUMBIA, *County of Washington, to wit* :

On this fourteenth day of January, in the year of our Lord eighteen hundred and four, Francis Lowndes and Charles Lowndes, the grantors within named, personally appeared before us, the subscribers, two of the justices of the peace for the county aforesaid, and acknowledged the foregoing deed of indenture to be their and each of their act and deed, and delivered for the purpose therein contained. At the same time and place also personally appeared Jane Lowndes, wife
23 of the said Francis Lowndes, and she being by us privately examined apart from and out of the presence and hearing of her said husband, did acknowledge the aforegoing deed of indenture to be her act and deed, and the property thereby conveyed to be the right and estate of the therein named Richard and Leonard H. Johns, and she did relinquish and release all her right, title, and claim of dower of, in, and to the same for the purposes therein mentioned, and she did declare that she made such her acknowledgement and relinquishment willingly and freely and without being induced thereto by fear or threats of or ill usage by her husband or fear of his displeasure, according to law.

Acknowledged before and certified by us—
THOS. CORCORAN.
JOHN OAKLY.

2 [Copy.]

Deed.—Richard Johns and Leonard H. Johns to Walter Hellen.

The following deed was recorded August 19th, 1806 :

This indenture, made this fourth day of August, in the year of our Lord one thousand eight hundred and six, between Richard Johns and
24 Leonard H. Johns, of Georgetown, in the county of Washington and District of Columbia, of the one part and Walter Hellen, of the same county and district, of the other part; whereas by a certain deed of indenture, bearing date on or about the fourteenth day of January, in the year of our Lord one thousand eight hundred and four, between Francis Lowndes and Charles Lowndes of the one part, and the said Richard Johns and Leonard H. Johns of the other part, the said Francis Lowndes and Charles Lowndes did convey unto

the said Rich'd Johns and Leonard H. Johns, their heirs and assigns forever, all that part of a lot or portion of ground situate, lying and being in Georgetown, in Washington county, and District of Columbia, fronting on west landing, beginning at the southwest corner of the said Francis Lowndes' warehouse, then occupied by the said Richard Johns and Leonard H. Johns, and running from thence westwardly with the north side of west landing twenty feet three inches to the southeast corner of the brick warehouse, the property of the said Francis Lowndes, lately occupied by said Louis DeBlois; thence northwardly and at right angles with the west landing
25 one hundred and eighty-seven feet to a new street, laid off by the said Francis Lowndes, called Pitt street; thence east with said street twenty-two feet to intersect a line drawn northwarly from the beginning and parallel to the second line above mentioned; thence with said parallel to the beginning, together with the improvements thereon erected. And whereas the said Francis Lowndes did also, by said deed of indenture, grant to the said Richard Johns and Leonard H. Johns, their heirs, and assigns the privilige and right of using the wharf built by the said Francis Lowndes and Charles Lowndes, fronting one hundred and one feet or thereabouts on the river Potomac, free from all expense, for the purpose, from time to time, of moving their ships or vessels and for lading and unlading the same; and all goods, wares, and merchandizes, and also on all articles of trade and commerce, imported or exported by them, the said wharf, and the interest of said Francis Lowndes and Charles Lowndes therein being described in said deed of indenture as well as the uses, purposes, and estate to which the same might be employed by said Richard Johns, and
26 Leonard H. Johns, their heirs and assigns.

And whereas in said indenture there are also contained other grants of privileges, benefits, and immunities, granted by said Francis Lowndes and Charles Lowndes, to said Richard Johns and Leonard H. Johns, their heirs and assigns, as also certain covenants and agreements intended to ensure to the benefit and advantage of said Richard Johns and Leonard H. Johns, their heirs and assigns forever, as by said indenture recorded amongst the land records for Washington county aforesaid, to which the parties hereto refer for greater certainty, will appear:

Now this indenture witnesseth, that the Richard Johns and Leonard H. Johns, for and in consideration of the sum of two thousand two hundred dollars current money, to them in hand paid by the said Walter Hellen, on or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have & each of them hath given, granted, bargained, sold, released, enfeoffed, and confirmed, and by these presents they and each of them doth give, grant, bargain, sell, release, enfeoffed, and confirm unto the said Walter Hellen, his heirs and assigns forever, the aforesaid
27 piece or parcel of ground so as aforesaid conveyed by said Francis & Charles Lowndes to said Richard Johns & Leonard H. Johns, and described in said deed of indenture as aforesaid, being

all that part of a lot or portion of ground situate, lying and being in Georgetown, in the county and district aforesaid, fronting on west landing, at the southwest corner of said Francis Lowndes' brick warehouse, formerly occupied by said Richard Johns and Leonard H. Johns; and running from thence westwardly with the north side of west landing twenty-five feet three inches to the southeast corner of the brick warehouse, the property of said Francis Lowndes, formerly occupied by Lewis De Blois; thence northwardly and at right angles with the west landing one hundred and eighty-seven feet to a new street laid off by said Francis Lowndes, called Pitt street; thence east with said street twenty-two feet to intersect a line drawn northwardly from the beginning and parallel to the second line above mentioned; thence with said parallel to the place of beginning; together with all improvements thereon erected; to have and
28 to hold the same unto the said Walter Hellen, his heirs and assigns forever, to and for his and their only use and behoof forever; and the said Richard Johns and Leonard H. Johns and each of them for himself, his heirs, executors, and administrators do and doth covenant and agree with the said Walter Hellen, his heirs and assigns, that they, the said Richard Johns & Leonard H. Johns and each of them, their heirs, executors, and administrators, the above granted piece or portion of ground unto the said Walter Hellen, his heirs and assigns, against all persons whatever, will forever warrant & defend; and the said Richard Johns and Leonard H. Johns do and each of them doth hereby grant, assign, & transfer unto the said Walter Hellen, his heirs and assigns, all the benefits, privileges, advantages, and immunities of whatever kind or nature they may be, either in law or equity, made and contained in said in part recited deed of indenture, and thereby granted to said Richard Johns and Leonard H. Johns, and all the right, title, and interest which the said Richard Johns and Leonard H. Johns could either in law or equity have or derive from the same, as also all the covenants, grants, and permissions therein contained, for their use; and subject,
29 however, to such conditions, reservations, & terms as are therein provided on the behalf of the said Francis Lowndes and Charles Lowndes; all which the said Hellen, his heirs and assigns, shall have and enjoy without any let, hindrance, interruption by or from the said Richard Johns & Leonard H. Johns, their or either of their heirs, executors, administrators, or any person or persons claiming under them or either of them; the true intent and meaning of these presents hereto being that the said Hellen, as to the said covenants, permissions, benefits, and immunities, should have and enjoy only such right, title, and interest as the said Richard Johns & Leonard H. Johns might or could, by virtue of said deed of indenture, have and posess in the same—it not being the intention of the said Richard Johns & Leonard H. Johns, or the said Walter Hellen, that the said Richard & Leonard H. Johns should make a general warranty as to extent or continuance of said right, as they have only assented to give a general warranty of the piece or portion of ground first-above granted, to the grant of which a general warranty has been attached in these presents.

In witness whereof the said Richard Johns & Leonard H. Johns have hereto put their hands and affixed their seals the day
30 and year first above written.

[SEAL.] R. JOHNS.
[SEAL.] LEON'D H. JOHNS.

Signed, sealed and delivered in presence of—
THOS. CORCORAN.
RICHARD PARROTT.

DISTRICT OF COLUMBIA, *Washington County, to wit:*

One this fourth day of August, in the year of our Lord one thousand eight hundred and six, personally appeared before us, the subscribers, two of the justices of the peace for the county aforesaid, Richard Johns & Leonard H. Johns, parties to the aforegoing instrument, and acknowledged the same to be their act and deed, for the purpose therein expressed. At the same time appeared before us Margaret A. Johns, wife to the aforesaid Leonard, and acknowledged the lands within-mentioned to be the right, title, and estate of the within mentioned Walter Hellen, and relinquished all claim of dower in and out of the property mentioned in the aforegoing indenture. And the said Margaret A., being by us privately examined apart from and out of the hearing of her said husband, declared that she made such her acknowledgement and relinquishment willingly and freely, & without being induced thereto by fear or threats of ill usage
31 by or from her said husband, or fear of his displeasure.

Taken before—

THOMAS CORCORAN.
RICH'D PARROTT.

B [Copy.]

Deed from heirs of Walter Hellen to A. H. Boucher.

This indenture, made this fourth day of November, in the year eighteen hundred and fifty-nine, between Adelaide Hellen, Mary C. Adams, and Johnson Hellen, and Jane E. Hellen, his wife, all of Washington city, D. C., of the first part, and Alfred H. Boucher, of Georgetown, in the district aforesaid, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of one thousand dollars, to them in hand paid by the said party of the second part, at and before the ensealing and delivery hereof, the receipt of which is hereby acknowledged, do hereby bargain, sell, alien, enfeoff, release, & convey unto the said party of the second part, his heirs and assigns forever, the following described part of a lot of ground, situated in Georgetown, in the District of Columbia, fronting on what was formerly known as west landing, and beginning at the southwest corner of a brick warehouse, formerly owned by one Francis Lowndes, and running thence westerly with the north side of

32 west landing, twenty feet three inches to the southeast corner of a brick warehouse, also formerly owned by the said Francis Lowndes; thence northwardly, and at right angles with west landing one hundred and eighty-seven feet to a street laid off by the said F. Lowndes called Pitt street; thence east with said street twenty-two feet to intersect a line drawn northwest wardly from the beginning, and parallel to the second line above-mentioned; thence with said parallel to the beginning, excepting, however, therefrom all such parts of said lot as have heretofore been taken and condemned by the Chesapeake and Ohio Canal Company, which shall not be considered as conveyed by these presents, together with all the hereditaments, rights, ways, and other privileges, with the appurtenances belonging thereto. To have and to hold the said described lot, piece or parcel of ground, excepting, as aforesaid, the part thereof taken for the use of the said canal company, together with all the hereditaments, rights, liberties, immunities, privileges, ways, uses, and other premises with the appurtenances thereunto belonging unto the said party of the second part, his heirs and assigns forever to and for his and their sole use and behoof. And the said parties of the first part do hereby, severally for themselves and their several heirs, covenant and agree to and with
33 the said party of the second part, his heirs and assigns, that the above piece of ground, excepting therefrom such part thereof so condemned by said canal company unto the said party of the second part, his heirs and assigns, against all persons lawfully claiming, or to claim any estate or title thereto shall and will warrant and forever defend. And the said parties of the first part do hereby grant, assign, transfer and convey unto the said party of the second part, his heirs and assigns, all the rights, benefits, privileges, immunities, including the use of the wharf, and other liberties contained, and mentioned, and assigned in a deed from Richard Johns and Leonard H. Johns to Walter Hellen, dated the 4th day of August, in the year 1806, and recorded in liber. 2, No. 16 folio 35 and 36 of the land records of Washington county, D. C., as therein described, as having been granted to them by Francis Lowndes and Charles Lowndes by a deed dated the 14th of January, 1804, to be subject, however, to the conditions, reservations, and terms provided and stipulated in the deed aforesaid of said Lowndes, and of the said Johns, which two deeds are to be referred to and taken as a part of these presents for ascertaining the extent, kind, and substance
34 of the rights, immunities, and privileges hereby granted and assigned. It being the intent and purpose of these presents, and the parties hereto, that the said party of the second part, his heirs and assigns, shall have the use and benefit of such grants to the same extent as the said parties of the first part are entitled to claim, enjoy, and exercise, at the date of these presents, by virtue of the above referred to deeds of the said Francis and Charles Lowndes or of Richard Johns and Leonard H. Johns.

In witness whereof the said Adelaide Hellen, Mary C. Adams, Johnson Hellen, and Jane E. Hellen, his wife, have, on the day and

year first above written, severally set their hands and seals to these presents.

[SEAL.] ADELAIDE HELLEN.
[SEAL.] MARY C. ADAMS.
[SEAL.] JOHNSON HELLEN.
[SEAL.] JANE E. HELLEN.

Signed, sealed, and delivered in presence of—
F. I. MURPHY.
GILBERT L. GIBERSON.

STATE OF NEW YORK, *County of Oneida:*

We, Dolphus Bennett & Morven M. Jones, justices of the peace in and for Oneida county, in the State of New York, do hereby certify that Mary C. Adams, a party to a certain deed, dated the 4th day of November, 1859, and hereto annexed, personally appeared before us in our county aforesaid, she being personally well known to us as the person who executed the said deed, and acknowledged the same to be her act and deed.

Given under our hands and seals this 4th day of November, in the year 1859.

DOLPHUS BENNETT.
MORVEN M. JONES.

STATE OF NEW YORK, *County of Oneida:*

I, J. Earl Hulbert, clerk of the Court of Oy. & Terminer in and for said county, do hereby certify that the above-named Dolphus Bennett & Morven M. Jones, before whom the above acknowledgment was taken and made, were at that time justices of the peace in and for Oneida county, in the State of New York, duly sworn, authorized and commissioned to act as such, and that due faith and credits are and ought to be given to all their acts as such in all courts and elsewhere.

In witness whereof I have hereto set my hand and affixed the seal of the said court on this 4th day of November, in the year 1859.

J. E. HULBERT, *Cl'k.*

[Seal Oneida county, N. Y.]

DISTRICT OF COLUMBIA, *Washington County, to wit:*

We, F. I. Murphy and Gilbert L. Giberson, justices of the peace in and for Washington county, D. C., aforesaid, do hereby certify that Adelaide Hellen, Johnson Hellen, and Jane E. Hellen, his wife, parties to a certain deed dated the 4th day of November, in the year 1859, and hereto annexed, personally appeared before us in our county aforesaid, they being personally well known to us as the persons who executed the said deed, and severally acknowledged the said deed to be their act and deed; and the said Jane E. Hellen, the wife of the said Johnson Hellen being by us examined privately and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her

act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this 7th day of November, in the year 1859.

[SEAL.] F. I. MURPHY, *J. P.*
[SEAL.] GILBERT L. GIBERSON, *J. P.*

Received 7th May, 1860, to be recorded, and same day was recorded in Liber J. C. S. No. 197, folio 243 et seq. one of the land records of Washington county, in the District of Columbia, and examined by—

JOHN C. SMITH, *Clk.*

Deed from A. H. Boucher to E. M. Linthicum.

This deed, made this sixteenth day of June, A. D. eighteen
37 hundred and sixty-four, by and between Alfred H. Boucher and Sarah Boucher, his wife, parties of the first part, and Edward M. Linthicum, party of the second part, all of Georgetown, in the county of Washington, and District of Columbia, witnesseth, that the parties of the first part, for the consideration of ten thousand and two hundred dollars to them in hand paid by the party of the second part, the receipt of which is hereby confessed, have bargained and sold, and by these presents do grant, bargain, sell, convey, and confirm unto the said party of the second part those certain lots or parcels of ground situated in said Georgetown, and described as follows: That certain lot or piece of ground contained within the following lines, beginning at the point of intersection of the west line of Duch Lane or Market street with the south line or bank of the Chesapeake and Ohio canal, and running thence southwardly along said west line of Market street or Duch lane seventy-one feet and a half; thence west forty-seven feet and three inches; thence south fifteen feet to an alley; thence with the north line of said alley west one hundred and twenty-two feet to a lot acquired by said Boucher from Johnson Hellen and others; thence with the said lot
38 northwardly eighty-five feet to the south line of the Chesapeake and Ohio canal, and thence eastwardly with said canal to the beginning, being the same property conveyed to said Boucher by William D. Beall and others by deed dated 30th September, 1859, and recorded in Liber J. A. S. number 197, folio 247, one of the land records of Washington county aforesaid; also that certain other lot or piece of ground in said Georgetown included within the following lines: Beginning on the north side of Water street, at the southwest corner of a brick warehouse, formerly owned by Francis Lowndes, and now the property of Darby & Shoemaker, and running thence westwardly with said Water street twenty feet and three inches to the southeast corner of another brick warehouse, formerly owned by said Francis Lowndes, and now the property of said Darby & Shoemaker; thence northwardly at right angles with said Water street one hundred and eighty-seven feet to the south line of the Chesapeake and Ohio canal; thence eastwardly with said canal

twenty-two feet to the west line of the lot hereinbefore described, and thence southwardly with said lot in a straight line to the
39 beginning, being the same property acquired by said Boucher from Johnson Hellen and others by deed dated 4th November, 1859, and recorded in Liber J. A. S. number 197, folio 243, one of the land records of said Washington county. To have and to hold the above-described lots of ground and premises, together with all rights, ways, privileges, appurtenances and hereditaments to the same belonging or in anywise appertaining, and with the buildings thereon unto him the said Edward M. Linthicum, and to his heirs and assigns forever; and the said parties of the first part for themselves their heirs, executors, and admistrators, do hereby covenant with the said party of the second part, his heirs and assigns, that their title to said premises is clear and unincumbered, and that they will forever warrant and defend the same unto the said party of the second part, his heirs and assigns, against all persons claiming or to claim the same, and that they will at any time hereafter execute and deliver any other and further deeds which counsel learned in the law may advise to be necessary more fully to assure said lots and premises unto the said party of the second part, his heirs and assigns; and the said parties of the first part do also hereby grant, sell,
40 assign, transfer, and convey unto the said party of the second part, for the consideration hereinbefore stated, all the rights, benefits, uses, privileges, liberties, and immunities which were granted to them by Johnson Hellen and others by their deed aforesaid in, to, and of that certain wharf fronting one hundred and one feet or thereabouts on the Potomac river, and formerly built and owned by Francis and Charles Lowndes, and into and of the walls of the two brick warehouses aforesaid, formerly owned by Francis Lowndes, and forming the eastern and western boundary of the lot hereinbefore last described as acquired by the parties of the first part from Johnson Hellen and others, the said party of the second part, his heirs and assigns, to have, hold, and enjoy said rights, benefits, uses, privileges, liberties, and immunities as fully and to the same extent as the same are granted and conveyed in the deed of said Francis and Charles Lowndes dated 14th January, 1804, and recorded in Liber K, No. 10, folio 187, one of the land records of Washington county aforesaid, to Richard and Leonard H. Johns, in the deed of said Richard and Leonard H. Johns, dated 4th August, 1806, recorded in Liber Q. No. 16, folio 35 of said records, to Walter Hellen, and in
41 the deed aforesaid of Johnson Hellen and others to the said Alfred H. Boucher.

In witness whereof the said parties of the first part have hereunto set their hands and seal the day and year first above written.

[SEAL.] A. H. BOUCHER.
[SEAL.] SARAH BOUCHER.

Executed in presence of—

JENKIN THOMAS.

[20-dollar revenue stamp, cancelled.]

DISTRICT OF COLUMBIA, *Washington County, to wit:*

I, Jenkin Thomas, a notary public duly authorized and commissioned within and for the county aforesaid, do hereby certify that Alfred H. Boucher and Sarah Boucher, his wife, parties to a certain deed, bearing date the sixteenth day of June, A. D. 1864, and hereto annexed, personally appeared before me this day at the county aforesaid the said Alfred H. Boucher and Sarah Boucher, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Sarah Boucher, wife of said Alfred H. Boucher being by me examined privily and apart from her said husband, and having the deed aforesaid first fully explained to her, she, the said Sarah Boucher,
42 acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notorial seal at the county aforesaid this 30th day of June, A. D. eighteen hundred and sixty-four.

[NOTARY PUBLIC SEAL.] JENKIN THOMAS.

Rec'd July 22, 1864, and recorded in the land records of Washington county, D. C., Liber N. C. T., No. 41, folio 107 to 111. Examined by—

N. C. TOWLE, *Reg't.*

And ~~your~~ parol proof tending to show that the said R. & L. H. Johns, while they held under their deed, built an office on the piece of the ground conveyed to them as aforesaid, and carried on the shipping business, using the said wharf mentioned in said pleadings and evidence; and while the said property was owned by said Walter Hellen it was occupied by a tenant under him who erected a bark mill and cooper shop on said wharf, and had his mill-race running from the canal in the rear of said lot across the ground occupied by said wharf to the Potomac river, and used the said wharf
43 to land his materials, and to ship therefrom his manufactured articles, and used and occupied said lot and wharf about two years from spring of 1841 to spring of 1843; and further, that when the defendant purchased, and when he was about to enclose the said wharf, he stated that he knew a right of way over said wharf was claimed by the owners of the ground named in said deeds, but he did not know that the parties had any such right, and afterwards he applied to said Alfred Boucher, and offered to purchase from him whatever interest he might have in the said wharf.

And further that plaintiff's said lot runs from the said wharf to the Chesapeake and Ohio canal, and its great value consists in the facilities it affords to him in transhipping coal from boats in the said canal to vessels in the Potomac river over this wharf, and the annual value thereof, that is, of the right so to use said wharf, to him is more than one thousand dollars; and he also put in evidence the survey and plat of the premises hereunto annexed and marked "A," and made a part hereof, (not in the file, R. J. M., clerk,) and also

gave proof to show that the defendant had erected a strong close board fence across the said wharf on the line of the street, and
44 on the east and west side of said wharf, so as utterly to exclude the plaintiff from any access to or use of said wharf, and rested.

And thereupon the defendant, to maintain the issues on his part, gave evidence tending to show that the said office of the said R. & L. H. Johns was erected on the rear of plaintiffs lot, in connection with their warehouse, which was on the adjoining lot, and they occupied the same untill about the year 1817, when they failed; that said lot and wharf have ever since been vacant and unoccupied until purchased by the defendant, except when occupied by said Seaver as aforesaid, between the years 1841 and 1843; that the original wharf rotted away and disappeared, and about the year 1857 or 1858, a new wharf was erected by defendant who has ever since held exclusive possession thereof.

And further gave in evidence the deeds and chancery proceedings following:

Deed.—Recorded May 23d, 1807.—John M. Beatty and Charles A. Beatty to the Corporation of Georgetown.

This indenture, made this fifth day of May, one thousand eight hundred and seven, between John Middagh Beatty and Charles Affordby Beatty, both of Georgetown, in the District of Columbia, of
45 the one part, and the mayor, recorder, aldermen, and common councilmen of the corporation of Georgetown, of the other part, witnesseth, that the said John and Charles, for the purpose of compromising and sittling in an amicable manner a suit in ejectment now pending in the Circuit Court of the county of Washington, in the District of Columbia, between John Montz, lessee of the said corporation, against the aforesaid John and Charles and Thomas Johnson Beatty, sons and heirs at law of Charles Beatty, deceased, and for and in consideration of the sum of one dollar to them, the said John and Charles, by the s'd mayor, recorder, aldermen, and common councilmen of the corporation of Georgetown in hand paid, the receipt whereof is hereby acknowledged, have given, granted, bargained, and sold, and by these presents do give, grant, bargain and sell unto them, the said mayor, recorder, aldermen, and common councilmen of the corporation of Georgetown, all their right and interest of, in, to those parts of two tracts of land situate in the district aforesaid, the one tract called and known by the name of Water piece, the other tract called and known by the name of Frogland, which lay to the south of the three streets, or either of them, known and distinguished in the plat of old Geor Georgetown by the
46 respective names of West Landing, Keys, and Wapping, and bounded on the west by extending the most westwardly line of Frederick street southwardly until it strikes the most southwardly outline of the said tracts called Waterpiece or Frogland, whichever of them lays most to the south, and bounded on the east by extending the most eastward by line of Fishing lane, southwardly into

the water, until it intersects the [the] most southwardly outline of said tracts of land called Waterpiece or Frogland, whichever of them lays most to the south, together with all the rights, privilidges, and appurtenances to the said lands hereby conveyed, or to any part or parcel thereof, belonging or in anywise appertaining, to have and to hold the said lands as hereinbefore described, to be granted, bargained, and sold, and every part and parcel thereof, to them, the said mayor, aldermen, and common councilmen, the corporation of Georgetown, and their successors in office forever, for the use and benefit of Georgetown aforesaid, and the corporation thereof, and for no other use, intent, or purpose whatever.

In testimony whereof the said John Middagh Beatty and Affordby Beatty have to these presents respectively set their hands and affixed their seals the day and year first above written.

[SEAL.] J. M. BEATTY.
[SEAL.] CHAS. A. BEATTY.

47 Signed, sealed, and delivered in the presence of—the word between the 15th and 16th line, "their right and interest of, in, and to," being first interlined—
THOS. CORCORAN.
JNO. OTT.

DISTRICT OF COLUMBIA, *Washington County, to wit*:

Be it remembered, that on the fifth day of May, in the year one thousand eight hundred and seven, personally appeared before us the subscribers, two of the justices of the peace for the county aforesaid, the above-named John Middagh Beatty, and Litty his wife, and Charles Affordby Beatty and Eunice his wife, and severally and respectively acknowledged the foregoing indenture as his and her respective act and deed; and the said Litty and Eunice being by us privately examined apart from and out of the hearing of their husbands, or either of them, whether they and each of them did respectively make this said acknowledgment willingly and freely, without being induced thereto by fear or threats of or ill usage from their said respective husbands, or either of them, or from fear of their displeasure or the displeasure of either of them, they respectively declare that they did, certified by us.

THOS. CORCORAN.
JNO. OTT.

I, E. C. Eddie, register of deeds for the District of Colum-
48 bia, do hereby certify that the foregoing and annexed is a true copy of a deed from John M. Beatty and Charles A. Beatty, to the corporation of Georgetown, recorded in Liber R, No. 17, folio 339, of the land records for the county of Washington, in the said District.

Given under my hand and official seal this 11th day of May, A. D. 1867.

EDWARD C. EDDIE, *Register*.

[SEAL OF OFFICE.]

[5-ct. int. rev., cancelled.]

Deed from Francis and Charles Lowndes to Jno. Templeman.

This indenture, made this twenty-ninth day of April, in the year eighteen hundred, between Francis Lowndes, and Charles Lowndes, of Georgetown, Montgomery county, and State of Maryland, of the one part, and John Templeman of town, county, and State aforesaid, witnesseth: that whereas the said John Templeman has, at the request of Francis Lowndes and Charles Lowndes, endorsed certain negotiable notes in the bank of Columbia, for the sum of nine thousand four hundred and fifty dollars, payable in fifty-five days after date, of which Francis Lowndes, Charles Lowndes, and John Suter are the drawers, and whereas he, the said Templeman, may hereafter endorse certain other negotiable paper drawn by the said Francis Lowndes, Charles Lowndes, and John Suter, and whereas the said
49 Lowndes are anxious to indemnify the said Templeman from all damages which he may sustain in consequence of endorsements already made, or which may at any time hereafter be made by him upon account of said Francis Lowndes, Charles Lowndes, and John Suter as aforesaid:

Now this indenture witnesseth, that the said Francis Lowndes and Charles Lowndes, for and in consideration of the premises, as well as for and in consideration of the sum of five shillings, current money, to them in hand paid on or before the ensealing or delivery of these presents, the receipt whereof is hereby acknowledged, have given, granted, bargained, sold, assigned, transfered and set over, and by these presents do give, grant, bargain, sell, assign, transfer and set over unto the said John Templeman, his heirs and assigns, forever all and singular the hereinafter described property, that is to say all their right, title, claim and interest to a three-story brick warehouse and part of lot number thirty-five, lying on Water street in Georgetown, together with the wharf in front of the said house, which house, wharf and part of lot number thirty-five they, the said Francis Lowndes and Charles Lowndes, sold to General Walter Stewart, in the year one thousand seven hundred and ninety-four, but
50 have not conveyed, reference to the agreement between the said Francis Lowndes and Charles Lowndes, and Walter Stewart will more fully explain; also the three-sory brick warehouse on Water street, nearly adjoining the above-mentioned house on the east end, together with that part of lot number thirty-eight on which it stands, and at present occupied by the said Francis Lowndes and Charles Lowndes, together with all and singular the buildings, rights, priviledges and appurtenances thereunto belonging or in anywise appertaining, to have and to hold the said bargaining property, and its appurtenances unto him, the said John Templeman, his heirs and assigns forever, in trust nevertheless, and for the uses following, that is to say, that he, the said John Templeman, his heirs and assigns, executors, or administrators, shall and will, and may from time to time, after giving five days' public notice, sell and dispose of for cash or otherwise, as they may think proper, the said property, so as to enable the said John Templeman, his executors or administrators, to

pay in bank the said notes which the said Templeman has endorsed, or any notes which he may hereafter endorse upon account of the said Francis Lowndes, Charles Lowndes, and John Suter, or
51 either of them, or which shall not be taken up by the said Francis Lowndes, Charles Lowndes, or John Suter, their executors or administrators, at the periods at which they may respectively become due, and that then after he is fully indemnified for the said endorsement the residue of the said property or its proceeds to revert to and be for the uses of the said Francis Lowndes and Charles Lowndes, their heirs and assigns.

In witness whereof the said Francis Lowndes and Charles Lowndes have hereunto set their hands and seals, the day and year above written.

[SEAL.] FRANCIS LOWNDES.
[SEAL.] CHA. LOWNDES.

Signed, sealed, and delivered in presence of—
JOSEPH FORREST.
THOS. CORCORAN.

STATE OF MARYLAND, *Montgomery County, ss:*

On this twenty-ninth day of April, in the year eighteen hundred, Francis Lowndes and Charles Lowndes, the grantors named in the aforesaid instrument of writing, personally appeared before us the subscribers, two of the justices of the peace for the county aforesaid, and acknowledged the said instrument of writing to be their act and deed, and delivered for the purposes therein mentioned acknowledged before.

JOSEPH FORREST.
THOS. CORCORAN.

Recorded the 10th day of October, 1800.

52 I, E. C. Eddie, recorder of deeds for the District of Columbia, do hereby certify that the foregoing and annexed is a true copy of a deed from Francis Lowndes and Charles Lowndes to John Templeman, recorded in Liber E, No. 5, folio 381st of the land records for Washington county, in the said District.

Given under my hand and official seal, this 11th day of May, A. D. 1867.

EDWARD C. EDDIE,
Register.

[Register of deeds District of Columbia.]

[5-cent inter. revenue stamp cancelled.]

Deed.—Recorded Nov. 28th, 1867.—Francis Lowndes and John Templeman to Walter Smith.

This indenture, made this twenty-eight day of September, eighteen hundred and seven, between Francis Lowndes and John Templeman of the first, and Walter Smith of the other part, witnesseth: Whereas

the said Francis Lowndes and John Templeman heretofore, by deed of indenture bearing date the fourth day of March, eighteen hundred and seven, made between themselves of the one part, and Walter Smith of the other part, did recite that Francis and Charles Lowndes, being largely indebted to the Bank of [Bank of] Co-
53 lumbia on notes endorsed by John Templeman, did, on the twenty-ninth day of April in the year eighteen hundred, mortgage or convey in trust to John Templeman the following described property, amongst other property, to secure him for his said endorsement, and reciting that Charles Lowndes provided for a payment of part of the debt that still remains due to the Bank of Columbia, for which the said Templeman was liable by being endorser, in consequence of which a part of the property mortgaged to said Templeman aforesaid had been conveyed to Benjamin Stodded, at the request of said Charles Lowndes and Francis Lowndes, had agreed to exonerate the said Templeman from the remainder of the said debts or debts that remains, amounting on that day to the sum of eight thousand five hundred and eighty-seven dollars, by passing his own note to the bank therefor, with his son Francis Lowndes, jr., as his endorser, and the bank did agree to take the same and to exonerate the said Templeman from all responsibility therefor, and recited that the said Francis Lowndes, being desirous to secure the payment thereof to the said Bank of Columbia, as well as to secure his said son, Francis Lowndes, jr., for his endorsement or endorsements.

54 Now this indenture witnesseth, that the said Francis Lowndes and John Templeman, in consideration of the premises, and also for and in consideration of the sum of one dollar to them in hand paid by the said Walter Smith, the receipt whereof is hereby acknowledged, hath given, granted, bargained, sold and released, and by these presents do give, grant, bargain, sell and release unto the said Walter Smith, his heirs and assigns, all and singular the hereinafter-described property; that is to say, the brick warehouse and dwelling-house where the said Francis Lowndes at present resides, on lot number thirty-five, in Georgetown, with the wharf, or part of the same, and all out-houses and grounds enclosed by a plank fence, or, in other words, all the grounds and improvements sold by the said Francis Lowndes to General Walter Stewart, which bargain was afterwards cancelled, except about twenty feet of ground adjoining the east end of the house in which the said Francis Lowndes resides, and between that and the three-story brick warehouses adjoining each other under one roof, built by Francis and Charles Lowndes; also that one of the two three-story brick warehouses, being situated on lot number thirty-eight, now occupied by Walter and Clement Smith, which is farthest east from the
55 said where the said Francis Lowndes resides, together with the said ground on which the same stands, and eight feet back thereof, for the whole breadth of the said house; to have and to hold the said houses, grounds and premises, with the appertenances unto the said Walter Smith, his heirs and assigns forever, upon the trust

nevertheless, and to and for the intents and purpose hereinafter mentioned and declared of and concerning the same; that is to say, that at any time hereafter, when thereunto requested by the president and directors of the said Bank of Columbia, it shall be the duty of the said Bank of Columbia, it shall be the duty of the said Walter Smith, his heirs or assigns, as the case may be, to advertize and sell at public sale for ready money to the highest all the property herein given, granted, bargained and sold, or such part or parcel thereof as he or they may deem necessary and competent to answer the purpose of such sale, giving thirty days' previous and public notice of the time and place of such sale by advertisement in some newspaper printed in Georgetown, or in the city of Washington, and out of the money arising from such sale to pay first the necessary expenses attending the advertizing and conducting such sale,
56 and secondly to pay to the said president and directors of the aforesaid Bank of Columbia the amount for principal, interest, and costs of protest due upon all notes unpaid in whole or in part, upon which the said Francis Lowndes now stands as drawer, and which have been discounted in said [in said] bank, and now in possession of said president and directors, as also the amount for principal, interest, and costs of protest due upon all notes unpaid, in whole or in part, upon which the [the] said Lowndes may be drawer and the endorser thereof, Francis Lowndes, jr., and which may be hereafter discounted at said bank; and lastly to satisfy and pay over the overplus, if there be any, to the said Francis Lowndes, his heirs and assigns.

In witness whereof the said Francis Lowndes and John Templeman have hereunto set their hands and affixed their seals the day and year above written.

[SEAL.] FRANCIS LOWNDES.
[SEAL.] JOHN TEMPLEMAN.

Signed, sealed and delivered in presence of—
THOS. CORCORAN.
THOMAS PETER.

DISTRICT OF COLUMBIA, *Washington County:*

On this 28th day of September, eighteen hundred and seven, personally appeared before us the subscribers, two of the justices of the peace for the county aforesaid, Francis Lowndes and John
57 Templeman, parties to the within instrument of writing, and acknowledged the same to be their act and deed, for the purposes therein mentioned.

Before us.

THOS. CORCORAN.
THOS. PETER.

I, E. C. Eddie, register of deeds for the District of Columbia, do hereby certify that the foregoing and annexed is a true copy of a deed from Francis Lowndes and John Templeman to Walter Smith,

recorded in liber S, No. 18, folio 354 of the land records for the county of Washington, in the District aforesaid.

Given under my hand and official seal this 11th day of May, A. D. 1867.

EDWARD C. EDDIE, *Register.*

[Seal of register of deeds, District of Columbia.]

[5-cent inter. revenue stamp, cancelled.]

Deed.—Deed recorded 7th October, 1828.—*Walter Smith, Daniel Kurtz, and the Bank of Columbia to the Bank of the Un'd States.*

This indenture, made the ninth day of September, in the year of our Lord eighteen hundred and twenty-eight, between Walter
58 Smith, the trustee hereinafter mentioned, of the one part, and the president, directors and company, of the Bank of the United States, of the other part, when, as heretofore, on or about the twenty-eight day of September, in the year eighteen hundred and seven, a certain Francis Lowndes and John Templeman, being largely indebted to the president, directors, and company of the Bank of Columbia, conveyed to the said Walter Smith the property hereinafter mentioned, in trust, to secure the payment of the same to the said bank, and with authority to sell the said property in case he, said Francis Lowndes, should fail to pay his said debt, or any part thereof, as will more fully and at large appear by reference to the said deed recorded in the land records of the county of Washington aforesaid.

And whereas the said debt remaining unpaid on the eighteenth day of December, in the year eighteen hundred and twenty-four, the said Walter Smith, at the request of the proper officer of the said Bank of Columbia, and in pursuance of the terms and stipulations of the deed aforesaid, set up for sale at public vandue, on that day, all the hereinafter mentioned property, at which sale a certain Daniel Kurtz, of Georgetown, being the highest bidder, became the purchaser thereof for the aggregate sum of six thousand three hundred and fifty dollars.

59 And whereas the said Daniel Kurtz purchased the same only as agent of the said president, directors, and company of the Bank of Columbia, and at the request and to be held by him only for their use and benefit, and to be disposed of as they should direct.

And whereas the said president, directors, and company of the Bank of Columbia, by their deed bearing date the ninth day of February, in the year eighteen hundred and twenty-eight, have conveyed to the aforesaid president, directors, and company of the Bank of the United States all their property of every kind, and all the right, title and interest which they held in any, for causes and considerations in the said deed mentioned, which will appear by reference thereto in the land records of the county of Washington aforesaid.

And whereas the proper officers or agents of the said Bank of Columbia have requested the said Walter Smith to convey the property hereinafter mentioned to the said president, directors, and company of the Bank of the United States, in testimony of which request and of their full consent to this conveyance they have caused these presents to be signed by Richard T. Lowndes, the president of the said bank of Columbia, and the common seal of the said bank
60 to be hereunto affixed, and the said Daniel Kurtz hath testified his consent to this conveyance by affixing his hand and seal to the same.

Now therefore this indenture witnesseth, that the said Walter Smith, in consideration of the premises and of one dollar by the aforesaid president, directors and company of the Bank of the United States to him in hand paid, hath granted, bargained and sold, aliened, enfeoffed and confirmed, and doth hereby grant, bargain and sell, alien, enfeoff, confirm and convey unto the said president, directors and company of the Bank of the United States, and their successors and assigns, all the following lots, pieces or parcels of ground, together with all and singular the improvements, ways, alleys, rights, privileges, advantages and appurtenances, and all the rents, issues and profits thereof; that is to say, the brick warehouse and dwelling house where the said Francis Lowndes then resided, on lot number thirty-five, in Georgetown, with the wharf in front of the same, and the out houses and ground enclosed at the time of the date of the said Lowndes and Templeman's deed, by a plank fence; or in other words, all the ground and improvements sold by the said Francis Lowndes to General Walter Stewart, which bargain was afterwards cancelled, except about twenty feet of ground adjoining the
61 east end of the house in which the said Francis Lowndes then resided, and between that and the two three-story brick warehouses adjoining each other under one roof, built by Francis and Charles Lowndes. Also that one of the two three-story brick warehouses being situated on lot numbered thirty-eight, occupied at the time of the date of the said Lowndes and Templeman's aforesaid deed by Walter and Clement Smith, which is furtherest east from the said house where the said Francis Lowndes then resided, together with the ground on which the same stand and eight feet back thereof, for the whole breadth of the said houses. To have and to hold the said lots, pieces or parcels of ground, together with all and singular the buildings, improvements, ways, alleys, rights, priviledges, advantages, appurtenances, rents, issues and profits thereof, respectively, unto the said president, directors and company of the Bank of the United States, and their successors and assigns forever.

In testimony whereof the said Walter Smith and the said Daniel Kurtz have hereunto set their hands and seals the day and year first above written, and the president, directors and company of
62 the Bank of Columbia have executed this instrument by caus-

ing the same to be signed by their president, Richard T. Lowndes, and their common seal to be hereunto affixed.

[SEAL.] WALTER SMITH, *Trustee.*
[SEAL.] D. KURTZ.
[SEAL.] RICHARD T. LOWNDES,
President of the Bank of Columbia.

Signed, sealed and delivered in the presence of—
THOMAS SWANN.
JONATHAN PROUT.

DISTRICT OF COLUMBIA, *County of Washington, sct:*

This ninth day of September, A. D. eighteen hundred and twenty-eight, before the subscribers; two of the justices of the peace of the said county of Washington, personally appeared Walter Smith a party to the foregoing instrument, and acknowledged the same to be his act and deed.

SA'H SMITH, *J. P.*
JOSEPH FORREST, *J. P.*

I, E. C. Eddie, register of deeds for the District of Columbia, do hereby certify that the foregoing and annexed is a true copy of a deed from Walter Smith, trustee and al., to the Bank of the United States, recorded in liber W. B. No. 23, folio 239, &c., of the land records for the county of Washington, in the District of Columbia.

Given under my hand and official seal this 11th day of May,
63 A. D. 1867.

EDWARD C. EDDIE, *Register.*

[Seal register of deeds of D. C.]

[5-cent stamp, cancelled.]

Deed.—Bank U. States to George Bomford.—Recorded 23d August, 1838.

This indenture, made this twenty-fifth day of July, in the year of our Lord one thousand eight hundred and thirty-six, between the president, directors and company of the Bank of the United States, of the first part, and George Bomford, of the City of Washington, in the District of Columbia, of the second part, witnesseth, that the party of first part, for and in consideration of the sum of eighteen hundred dollars, lawful money of the United States, to them in hand paid by the said party of the second part, (the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliend, enfeoffed, released and confirmed, and by these presents do grant, bargain, sell, alien, enfeoff, release and confirm unto the said George Bomford, the party of the second part, his heirs and assigns, all that lot of ground in old Georgetown, on the south side of Water street,
said to be one hundred feet front, lying in front of the large
64 warehouse formerly occupied by Francis Lowndes, as the same was conveyed to the Bank of the United States, in the deed

hereinafter mentioned, being the same property which was conveyed by Walter Smith, trustee of Francis Lowndes and John Templeman, to the president, directors and company of the Bank of the United States, by deed bearing date the ninth day of September, A. D. 1828, recorded in the office for recording deeds in the county of Washington, in the District of of Columbia, in deed book W. B., No. 23, folio 239, as will more at large appear on refference being had thereto, together with all and singular the improvements, ways, water courses, rights, privileges, hereditaments and appurtenances whatsoever to the said hereby granted premises belonging or in anywise appertaining, and the reversions and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, claim and demand whatsoever of the said the president, directors and company of the Bank of the United States, in law or equity or otherwise howsoever of, in, to, or out of the same. To have and to hold the said piece of ground, hereditaments and premises hereby granted or intended so to be, with the appurtenances unto the said George
65 Bomford, and his heirs and assigns, to the only proper use, benefit and behoof of the said George Bomford, and his heirs and assigns forever. And the said president, directors and company of the Bank of the United States do hereby covenant and agree to and with the said George Bomford, the party of the second part, and his heirs and assigns, that they have done nothing to encumber the premises hereby granted, or to prejudice the title to the same, and that the premises hereby granted, with the appurtenances unto the said George Bomford, and his heirs and assigns, against them the said president, directors and company of the Bank of the United States, and all persons claiming or to claim by, from or under them, they will warrant and forever defend by these presents.

In witness whereof the said parties have hereunto interchangeably set their hands and seals, the said the president, directors and company of the Bank of the United States, having by their president, Matthew L. Bevan, esquire, caused their common seal to be hereunto affixed at Philadelphia, in the Commonwealth of Pennsylvania, the day and year above written.

MATTHEW L. BEVAN, *Pres't.*

[Seal of the bank.]

Signed, sealed and delivered by—

MATTHEW L. BEVAN, *Pres't.*

66 In the presence of—

HENRY BALDWIN.
L. MIFFLIN.
CHARLES MIFFLIN.

EASTERN DISTRICT OF PENNSYLVANIA, *Philadelphia County, sct:*

I, Henry Baldwin, one of the associate justices of the Supreme Court of the United States, do hereby certify that Mathew L. Bevan, esquire, the president of the Bank of the United States, personally appeared before me, at the said county of Philadelphia, on the twen-

ty-fifth day of July, in the year eighteen hundred and thirty-six, and in my presence executed the aforegoing deed as president of said bank, and acknowledged the same before me as the act and deed of the president, directors and company of the [of the] Bank of the United States. And I do further certify that the said Matthew L. Bevan is known to me as the president of the said bank, which was chartered by an act of the Congress of the United States.

Witness my hand this twenty-fifth day of July, A. D. eighteen hundred and thirty-six.

HENRY BALDWIN.

67 EASTERN DISTRICT OF PENNSYLVANIA,
Philadelphia County, sct:

I, Joseph Hopkinson, judge of the District Court of the United States for the eastern district of Pennsylvania, do hereby certify that Matthew L. Bevan, esquire, the president of the Bank of the United States, personally appeared before me, at the said county of Philadelphia, on the twenty-third day of February, in the year eighteen hundred and thirty-eight, and in my presence acknowledged the aforegoing deed as the act and deed of the president, directors and company of the Bank of the United States. And I do further certify that the said Matthew L. Bevan is known to me as the President of the said bank.

Witness my hand this twenty-third day of February, A. D. eighteen hundred and thirty-eight.

JOS. HOPKINSON.

UNITED STATES, *Eastern District of Pennsylvania, sct:*

I, Francis Hopkinson, clerk of the District Court of the United States for the eastern district of Pennsylvania, do hereby cer-
68 tify that the Honorable Joseph Hopkinson, before whom the within deed of the president, directors and company of the Bank of the United States was executed and acknowledged, was at the time of the execution and acknowledgement thereof and still is judge of the District Court of the United States for the eastern district of Pennsylvania, duly commissioned and qualified.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Philadelphia, this twenty-third day of February, A. D. 1838, and in the sixty-second year of the independance of the United States.

[SEAL OF COURT.] FRANCIS HOPKINSON,
Cl'k Dist. C'rt.

I, E. C. Eddie, register of deeds for the District of Columbia, do hereby certify that the foregoing is a true copy of a deed from the Bank of the United States to George Bomford, recorded in Liber W. B., No. 68, fol. 427, and of the land records for Washington county, in the district aforesaid.

Given under my hand and official seal, this 13th day of May, A. D. 1867.

EDWARD C. EDDIE, *Register.*

[Seal of register of deeds of D. C.]
[5-cent revenue, cancelled.]

69 Circuit Court of the District of Columbia for the county of Washington.

Decree in chancery.

WILLIAM HENDRICKS *& al.*
vs.
GEORGE BOMFORD, HEIRS, administrator, *& al.*
} In chancery.

This cause having been set for hearing against the defendants, J. B. H. Smith, Emily Corcoran, Wm. W. Corcoran, and the Bank of the United States, on the bill and answers of said defendants, and it appearing that the other defendants, who are non-residents, have not appeared and answered the complainants' bill within the time limited therefor by the order of publication passed in this cause on the 15th day of December, 1852, although due notice has been given to them by publication:

It is by the court this ninth day of May, 1853, ordered, that the bill of complaint be taken for confessed against said non-resident defendants; and it is further ordered, adjudged, and decreed, that the property described in the said bill, or so much thereof as may be necessary, be sold, and that Walter S. Cox be, and he is hereby, constituted and appointed trustee to make such sale, and the man-

70 ner and course of his proceeding shall be as follows: he shall first file in the cause his bond to the United States in this penal sum of five thousand dollars, with security to be approved by the court or a judge thereof, conditioned for the due discharge of his duties as trustee under this and every future order and decree in this cause; he shall then proceed to make sale of said property at public auction, after having given at least three weeks previous notice by advertisement in some convenient newspaper, once in each of three successive weeks, of the time, place, and terms of said sale, which terms shall be one-third of the purchase money to be paid in cash, and the residue in two equal instalments at six and twelve months respectively, to be secured by approved notes or bonds bearing interest; and on full payment of the purchase money and the ratification of any such sale he shall convey to the purchaser or purchasers, his, her, or their heirs and assigns, the premises sold, with all the interests therein of the parties to this cause, and, as soon as convenient after any such sale, he shall make report of the same and of the fairness thereof to this court under oath, and shall bring into court the proceeds of sale, to abide its order in the premises.

By order of the court.

Test: JNO. A. SMITH, *Clk.*

71 Circuit Court of the District of Columbia for the county of Washington.

Trustee's report.

WM. HENDRICKS
vs.
GEO. BOMFORD'S ADM'R and HEIRS. } In chancery.

The trustee in this cause respectfully reports that after having qualified as required by the decree of , 1853, he proceeded to advertise the property described in the proceedings, and sold on the fourth of June last, to the highest bidders, as follows:

Water lots Nos. 39 and 40, he sold to Mr. Charles Wilson, for one thousand dollars, and he has paid one-third of said sum in cash and given his notes at six and twelve months for the residue, with Mr. N. B. Hartley as surety.

Water lot No. 38, he sold to Philip T. Berry, for four hundred and twenty dollars, and he has paid one-third of said sum in cash and given his notes at six and twelve months for the residue with John Berry as surety.

The part of lot No. 80, of Old Georgetown, he sold on Tuesday, the 28th of June, after a postponement of three weeks, to Mr.
72 Thomas Wilson, for $1,200, and he has likewise complied with the terms of sale. And the leasehold interest in lot No. 31, on the south side of Water street, he withdrew for want of bidders. He further reports that said sale was bona fide.

WALTER S. COX, *Trustee.*

Sworn to in open court, this 13th day of Sept. A. D. 1853.
Test: JNO. A. SMITH, *Clk.*
Filed 13th Sept. 1853.

Circuit Court of the District of Columbia for the county of Washington.

Confirmation of sale.

HENDRICKS
vs.
BOMFORD'S ADM'R and HEIRS. } In chancery.

The trustee in this cause having reported that he has sold water lots Nos. 29 and 40, in Georgetown, to Charles Wilson, for $1,000; water lot No. 38, to P. T. Berry for $420; and the part of lot No. 80 of Old Georgetown, to Thomas Wilson for $1,200; and that the purchasers have complied with the terms of the sale. It is by the court, this 13th day of September, A. D. 1853, ordered that said sales be, and it is hereby ratified and confirmed, unless cause be shown to the contrary on or before the 3d Monday of October next, provided
73 that a copy of this order be inserted in the National Intelligencer once in each of three successive weeks before said Monday of October next.

By order of the court.

Test: JNO. A. SMITH, *Clk.*

Deed.—Walter S. Cox, trustee, to Chas. Wilson.

This indenture, made this twenty-third day of January, in the year of our Lord one thousand eight hundred and fifty-five, between Walter S. Cox, trustee, of the first part, and Charles Wilson, of the second part, both of the county of Washington, in the District of Columbia, witnessith:

Whereas by virtue of a decree of the Circuit Court of the District of Columbia for the county of Washington, made in the cause of Hendricks & al. *v.* Bomford & al., No. 883, equity, and dated May 9, 1853, the said Walter S. Cox on the fourth day of June, 1853, offered the hereinafter described premises for sale at public auction, and the said Charles Wilson was the highest bidder for and he became the purchaser of a part of said premises for the sum of one thousand dollars; and by a subsequent order passed in said cause the said Walter S. Cox was authorized to convey the residue of said premises to the
74 said Wilson upon payment by him of the additional sum of one hundred and eleven 11-100 dollars, and whereas said sale has been ratified by an order of said court passed in said cause and said purchase money fully paid, and said Wilson is entitled to a conveyance of the said premises.

Now therefore this indenture witnesseth, that the said Walter S. Cox, trustee, for and in consideration of the premises, and of the sum of one dollar to him in hand paid by the said Charles Wilson, before the ensealing and delivery of these presents, receipt of which sum of money is hereby acknowledged, hath bargained, sold, transferred, and conveyed, and doth by these presents bargain, sell, transfer, and convey unto the said Charles Wilson, his heirs and assigns, all those several lots of ground situate and lying in Georgetown, in the county aforesaid, and known as water lots Nos. "thirty-eight," (38,) "thirty-nine," (39,) and "forty," (40,) fronting each thirty-three feet and a third on Water street, in said town, together with the improvements and appurtenances, to have and to hold the same unto and for the only use and behoof of the said Charles Wilson, his heirs and assigns, forever.

In testimony whereof the said Walter S. Cox, trustee, hath
75 hereunto set his hand and seal, on the day and year first hereinbefore written.

[SEAL.] WALTER S. COX, *Trustee.*

Signed, sealed, and delivered in our presence—
HENRY REAVES.
PAUL STEVENS.

DISTRICT OF COLUMBIA, *County of Washington, sct*:

We, Henry Reaves and Paul Stevens, two justices of the peace in and for the county aforesaid, in the district aforesaid, do hereby certify that Walter S. Cox, party to a certain deed bearing date on the 23 day of January, A. D. 1855, and hereto annexed, personally appeared before us at our county aforesaid, the said Walter S. Cox be-

ing personally well known to us as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under our hands and seals this 23rd day of January, A. D. 1855.

[SEAL.] HENRY REAVES, *J. P.*
[SEAL.] PAUL STEVENS, *J. P.*

The word December being erased, and January inserted.

H. REAVES.

76 Received 10th Feb'y, 1855, to be recorded, and same day was recorded in liber J. A. S., No. 91, folios 258 and 259, one of the land records of Washington county, in the District of Columbia, and examined by—

JOHN A. SMITH, *Cl'k.*

Deed from Cha's Wilson to Alex'r Ray.

This indenture, made the twelfth day of July, in the year one thousand eight hundred and fifty-eight, between Charles Wilson, of Georgetown, in the District of Columbia, of the first part, and Alexander Ray, of the city of Washington, in the said District, of the second part, witnesseth, that in consideration of the sum of four thousand and eight hundred dollars, current money, to the said party hereto of the first part in hand paid by the said party hereto of the second part, at or before the execution of these presents, (the receipt whereof is hereby acknowledged,) he, the said party hereto of the first part, hath granted, bargained, sold, aliened, released, and confirm, and by these presents doth grant, bargain, sell, alien, release, and confirm unto the said party hereto of the second part, and his heirs, all those several lots of ground situate and lying in Georgetown aforesaid, and known as water lots numbers thirty-eight, thirty-nine, and forty, fronting each thirty-three and one-third feet on the south side
77 of Water street, in said town; and also all such part of lots, number forty-one and forty-two, situate and being in said town, on the said side of Water street, as was not conveyed by said party hereto of the first part, by deed heretofore made by him, to said party hereto of the second part, being supposed to be thirteen feet and two inches, or thereabouts, next to said lot number forty, on the west side thereof, together with the rights and appurtenances to the same belonging, and all the estate, right, title, and interest, legal and equitable, of the said party hereto of the first part therein and thereto, to have and to hold the said lots and part of lots and hereditaments hereinbefore mentioned and described, and every of them, and every part thereof, with the appurtenances, unto and to the use of the said party hereto of the second part, his heirs and assigns, forever. And the said party hereto of the first part, for himself, his heirs, executors, and administrators, doth hereby covenant to and with the said party hereto of the second part, his heirs and assigns, to warrant and defend the said hereditaments above described,

and every of them, and every part thereof, with the appurtenances unto the said party hereto of the second part, his heirs and
78 assigns, against him, the said party hereto of the first part, his heirs, and all other persons, and further to do and execute, or cause to be done and executed, at the request and cost of the said party hereto of the second part, his heirs or assigns, any other act or deed for more effectually conveying the said premises unto him and them.

In witness whereof the said party hereto of the first part hath hereunto set his hand and seal the day and year above written.

[SEAL.] CHAS. WILSON.

Signed, sealed, and delivered in the presence of—
ROBERT WHITE.
JENKIN THOMAS.

DISTRICT OF COLUMBIA, *County of Washington, to wit*:

We, Robert White and Jenkin Thomas, two justices of the peace in and for the county above mentioned, do hereby certify that Charles Wilson, party to a certain deed bearing date the twelfth day of July instant, and hereto annexed, personally appeared before us in our county aforesaid, on the day of the date hereof, (he being personally well known to us as the person who executed the said deed,) and then and there executed the said deed in our presence, and acknowledged the same before us to be his act and deed.

Given under our hands and seals this twelfth day of July, one thousand eight hundred and fifty-eight.

[SEAL.] ROBERT WHITE.
79 [SEAL.] JENKIN THOMAS.

Received 1st July, 1859, to be recorded, and the same day was recorded in liber J. A. S., No. 198, folios 13 and 14, one of the land records of Washington county, in the District of Columbia, and examined by—

JNO. A. SMITH, *Clk.*

And rested. Whereupon the defendant prays the court to instruct the jury that, upon the whole evidence aforesaid, if the same is believed by the jury, the plaintiff is not entitled to recover; which instruction the court gave. And the plaintiff, by his attorney, prays leave to except, and does hereby accept to the same, and prays the court to sign and seal this his first and only bill of exceptions, which is done accordingly this day of April, 1867.

[SEAL.] D. K. CARTTER,
Chief Justice.

Supreme Court.

Proceedings.

Proceedings before the Supreme Court of the District of Columbia, in general term, commencing on the third Monday, 20th day of January, 1868.

MONDAY, *January* 20, 1868.

Term commenced by proclamation by the marshal, by order of the court.

Present: Chief Justice Cartter, and Justices Olin, Fisher,
80 and Wylie.

SATURDAY, *February* 8, 1868.

Session resumed pursuant to adjournment.

Present: Chief Justice Cartter, and Justices Olin, Fisher, and Wylie.

EDWARD M. LINTHICUM, pl'tiff,
v.
ALEXANDER RAY, def't. } At law, No. 1887.

And now again come here the parties, by their said attorneys, and because it seems to the court that there is no error in the record of the proceedings of the Circuit Court, or in the judgment thereof, therefore it is considered that the judgment of said court be, and the same is hereby, affirmed, and that the defendant recover against the plaintiff the costs of his defence, and that he have execution thereof.

And in testimony that the foregoing is a true and complete transcript of all the proceedings of said court, in said cause, as the same are on file and of record in the clerk's office aforesaid, I here-
81 unto subscribe my name and affix the seal of said court, at my office in the city of Washington, the 30th day of March, A. D. 1868.

[SEAL.] R. J. MEIGS, *Clerk.*

April 28, 1868. Received of John A. Mills, esq., twenty-four and 90-100 dollars, costs of record.

R. J. MEIGS,
Cl'k Sup. C't D. C.

SUPREME COURT OF THE UNITED STATES.

No. 81.

DECEMBER TERM, 1869.

JOSIAH DENT ET AL., EXECUTORS OF EDWARD M. LINTHICUM, DECEASED, PLAINTIFFS IN ERROR,

vs.

ALEXANDER RAY.

ADDITION TO RECORD.—FILED DECEMBER 6, 1869.

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1 In the Supreme Court of the United States, No. 81, Dec. T., 1869.

JOSIAH DENT & OTHERS, EXECUTORS OF EDward M. Linthicum, dec'd, pl'ffs in error, *vs.* ALEXANDER RAY, DEF'T IN ERROR. } In error to the supreme court of the District of Columbia.

And now, to wit, Dec., 1869:

The deed from Francis Lowndes and John Templeman to Benjamin Stoddert, dated March 4th, 1807, and the deed from the same parties to Walter Smith, of the same date—being the two deeds referred to in the deed from the same parties to the said Walter Smith, dated Sept. 28, 1807—having been offered in evidence by the plaintiff on the trial in the court below, and omitted by mistake in making up the bill of exceptions, it is hereby agreed by the undersigned counsel, that the certified copies of the said two deeds, hereto attached, being the same used on the trial, shall be added to the bill of exceptions as offered by the plaintiffs, without suggestion of diminution of record, and with the same force & effect as if included therein, and certified to this court as part of the said bill of exceptions.

WALTER S. COX,
Of Counsel for Def't in Error.
JOHN A. WILLS,
Of Counsel for Pl'ff in Error.

2 *Francis Lowndes & John Templeman to Benjamin Stoddert.—Recorded November 28th*, 1807.

This indenture, made this fourth day of March, in the year eighteen hundred & seven, between Francis Lowndes & John Templeman, of the one part, & Benjamin Stoddert, of the other part, witnesseth: Whereas

Francis & Charles Lowndes did, on the 29th day of April, in the year 1800, mortgage or convey, in trust to John Templeman, certain real property in Georgetown, to save him harmless for endorsing sundry notes negotiable at the Bank of Columbia, as will more fully appear by reference to the said instrument of writing, recorded in the office for recording deeds, in Washington County, in the District of Columbia; and whereas a large sum now remains due to the Bank of Columbia on the notes aforesaid, whereon John Templeman is endorser, & Francis Lowndes hath agreed to exonerate the said Templeman from a part of said notes, by giving other notes to the Bank of Columbia with another endorser, and Charles Lowndes hath made an arrangement with Benjamin Stoddert for the payment of the residue of said notes, and with the consent of Francis Lowndes and John Templeman, hath given him therefor, in part payment, the property hereafter described, the legal estate of which is in the said Frances Lowndes & John Templeman: Now, this indenture witnesseth, that the said Francis Lowndes & John Templeman, for and in consideration of the premises & for & in consideration of one dollar to them in hand paid, the receipt whereof they do hereby acknowledge, have given, granted, bargained, & sold, & released, & by these presents do give, grant, bargain, sell, & release, unto Benjamin Stoddert, all of the following described property, to wit: That brick warehouse, which is the west of the two adjoining three-story brick
3 warehouses built by Francis & Charles Lowndes, on lot number thirty-eight, in Georgetown, together with the ground on which the same stands, and to extend for the breadth of the house or its front on west landing; from the said west landing to the distance of eight feet further north than the said house extends, to afford to the same the convenience of useing the back doors & windows; & it is fully understood by the said Lowndes & Templeman that the ground now conveyed & meant to be conveyed to the said Stoddert shall extend to west landing for the whole size of the front of the house, altho' the house itself may not be exactly on the street; to have and to hold the said house & ground hereby granted, with the appurtenances & advantages, to the said Benjamin Stoddert, his heirs, & assigns, forever; & the said Francis Lowndes & John Templeman, for themselves and their heirs, do covenant with the said Benjamin Stoddert, his heirs, & assigns, that they shall & will, when at any time hereafter they shall be reasonably thereto required by the said Benjamin Stoddert, his heirs, & assigns, at [at] his proper cost made, do and execute any other or further act or deed for the better assuring the said property to the said Benjamin Stoddert, his heirs, & assigns. In witness whereof, the said Francis Lowndes & John Templeman have hereunto set their hands & seals the day & year first above written.

FRANCIS LOWNDES. [SEAL.]
JOHN TEMPLEMAN. [SEAL.]

Signed, sealed, & delivered in the presence of—
RICHARD PARROTT.
THOS. CORCORAN.

4 DISTRICT OF COLUMBIA, *Washington County:*

On this fourth day of March, eighteen hundred & seven, personally appeared before us, the subscribers, two of the justices of the peace for the county aforesaid, Francis Lowndes & John Templeman, partys to the within instrument of writing, & acknowledged the same to be their act & deed; and at the same time Jane, the wife of the said Francis

Lowndes, relinquished her right of dower in the property therein conveyed, & being privately examined by us out of the presence & out of the hearing of her said husband, declared she doth the same without being induced thereto by threats from the said husband or fear of his displeasure or ill-usage, or fear of ill-usage; the name of John Templeman being interlined before the acknowledgement was made.

RICH'D PARROTT.
THOS. CORCORAN.

I, R. M. Hall, register of deeds for the District of Columbia, do hereby certify that the foregoing and annexed is a true copy of a deed from Francis Lowndes & John Templeman to Benjamin Stoddert, recorded in Liber S, No. 18, folio 341, &c., of the land records for Washington County, in the said District.

Given under my hand and official seal this 9th day of November, A. D. 1866.

[SEAL.] R. M. HALL, *Register.*

[Five-cent internal revenue stamp, canceled.]

5 (Indorsed:) Francis Lowndes & John Templeman to Benjamin Stoddart. Deed.
F. $1 75, paid by J. Dent. Dent.

6 [Copy.]

Francis Lowndes & John Templeman to Walter Smith.—Recorded November 28th, 1807.

This indenture, made this fourth day of March, eighteen hundred and seven, between Francis Lowndes and John Templeman, of the one part, and Walter Smith, of the other part, witnesseth: Whereas Francis and Charles Lowndes, being largely indebted to the Bank of Columbia on notes endorsed by John Templeman, did, on the twenty-ninth day of April, in the year 1800, mortgage or convey in trust to John Templeman the following described property, amongst other property, to secure him for his said endorsements; and whereas Charles Lowndes hath provided for a payment of part of the debt there still remaining due to the Bank of Columbia, for which the said Templeman is liable by being endorser, in consequence of which a part of the property mortgaged to said Templeman as aforesaid has been conveyed to Benj'n Stoddert at the request of said Charles Lowndes; and Francis Lowndes hath agreed to exonerate the said Templeman from the remainder of the said debt or debts—that remainder amounting on this day to the sum of eight thousand four hundred and eighty-seven dollars—by passing his own note to the bank therefore, with his son Francis Lowndes, jun., as his endorser, and the bank has agreed to take the same and to exonerate the said Templeman from all responsibility therefor; and the said Francis Lowndes being desirous to secure the payment thereof to the said Bank of Columbia as well as to secure his said son, Francis Lowndes, jun'r, for his
7 endorsement or endorsements: Now this indenture witnesseth, that the said Francis Lowndes and John Templeman, in consideration of the premises, and also for and in consideration of the sum of one dollar to them in hand paid by the said Walter Smith, the receipt whereof is hereby acknowledged, hath given, granted, bargained, sold, and released, and, by these presents, do give, grant, bargain, sell, & release unto the said Walter Smith, his heirs, and assigns, all and singular, the hereafter described property; that is to say, the brick warehouse

and dwelling-house where the said Francis Lowndes at present resides, on lot number thirty-five, in Georgetown, with the wharf in front of the same, and all the outhouses and ground [in front of the same], enclosed by a plank fence, or, in other words, all the ground and improvements sold by the said Francis Lowndes to General Walter Stewart, which bargain was afterwards cancelled, except about twenty feet of ground adjoining the east end of the house in which the said Francis Lowndes resides, and between that & the two three-story brick warehouses adjoining each other under roof, built by Francis and Charles Lowndes, also that one of the two three-story brick warehouses being situated on lot number thirty-eight, now occupied by Walter and Clement Smith, which is farthest east from the said house where the said Francis Lowndes resides, together with the ground on which the same stands and eight feet back thereof for the whole breadth of the said house. To have and to hold the said houses, grounds, & premises, with the
8 appurtenances, unto the said Walter Smith, his heirs, and assigns, forever, upon the trusts nevertheless, and to and for the intents and purposes hereafter mentioned and declared of and concerning the same; that is to say, that at any time hereafter when thereunto requested by the president and directors of the said Bank of Columbia, it shall be the duty of the said Walter Smith, his heirs, or assigns, as the case may be, to advertise & sell at public sale for ready money to the highest bidder all the property hereby given, granted, bargained, & sold, or such part or parcel thereof as he or they may deem necessary and competent to answer the purpose of such sale, giving thirty days' previous & public notice of the time & place of such sale by advertisement in some newspaper printed in Georgetown or in the city of Washington, and, out of the money arising from such sale, to pay first the necessary expenses attending the advertising and conducting such sale, &, secondly, to pay the said president and directors of the aforesaid Bank of Columbia the amount for principal, interest, & costs of protest due upon all the notes unpaid, in whole or in part, upon which the said Francis Lowndes now stands as drawer, and which have been discounted in said bank, & now in possession of said president & directors, as also the amount for principal, interest, & costs of protest due upon all notes unpaid in whole or in part upon which the said Lowndes may be drawer and the endorser thereof, Francis Lowndes, sen'r, & which may be hereafter discounted at said bank, and, lastly, to satisfy & pay over the overplus, if there be any, to the said Francis Lowndes, his heirs, & assigns.

9 In witness whereof, the said Francis Lowndes & John Templeman have hereunto put their hands & affixed their seals the day and year first above written.

FRANCIS LOWNDES. [SEAL.]
JOHN TEMPLEMAN. [SEAL.]

Signed sealed, & delivered in the presence of—the word twenty-ninth, between the fourth & fifth line from the beginning, and the words bargain, sell, & release, between the twenty-sixth & 27th lines, being first inserted—

RICHARD PARROTT.
THOS. CORCORAN.

DISTRICT OF COLUMBIA, *Washington County:*

On this fourth day of March, eighteen hundred and seven, personally appeared before us, the subscribers, two of the justices of the peace for

the county aforesaid, Francis Lowndes and John Templeman, parties to the within instrument of writing, & acknowledged the same to be their act & deed.

RICH'D PARROTT.
THOS. CORCORAN.

I, Nathaniel C. Towle, register of deeds for the county of Washington and District of Columbia, hereby certify that the foregoing and annexed is a true copy of a deed from Francis Lowndes and John Templeman to Walter Smith, as recorded in the land records of said county. Liber S, No. 18, folios 343, 344, & 345.

Given under my hand & official seal this 5th day of November, A. D. 1864.

[SEAL.] N. C. TOWLE, *Register.*

[Five-cent internal revenue stamp, canceled]

(Indorsed:) Copy. Francis Lowndes & J. Templeman to Walter Smith.

Mr. Dent. $2 25 paid by J. Dent, esq.

N. C. TOWLE.

(Indorsement on addition to record:) Supreme Court U. S. 1869. Dec. term. No. 81. Dent & al., ex'ors of Linthicum, dec'd, vs. Ray. Agreement of counsel & addition to record.

Filed 6th December, 1869.

Supreme Court of the United States.

DECEMBER TERM, 1869.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

LINTHICUM'S EXECUTORS, plaintiffs in error,
vs.
ALEXANDER RAY, defendant in error.
} No. 81.

STATEMENT OF THE CASE.

This was an action of tresspass brought in the court below to try the right of Linthicum, the plaintiff below, to use the wharf of the defendant for shipping coal and other commercial articles, in connection with a lot owned by said plaintiff, which lot is situated on the north side of Water street, formerly known as "west landing," in the city of Georgetown, and is nearly opposite the middle of the said wharf.

The locality of the plaintiff's lot and of the wharf in question will be seen by reference to the survey and plat of the premises referred to in the bill of exceptions, and also by reference to the enlarged diagram made therefrom for the more convenient use of the court. As will be seen by the diagram, the plaintiff's lot runs from the said wharf to the Chesapeake and Ohio canal, and its great value consists in the facilities it affords him in transhipping coal from boats in the said canal to vessels in the Potomac river over this wharf; and the annual value of the right to the plaintiff so to use this wharf was shown on the trial to exceed $1,000. (Printed recoord, p. 19.)

The defendant, by plea, denied this right claimed by the plaintiff, and the cause was tried by jury. The evidence of

title submitted by the respective parties, documentary and oral, is contained in the plaintiff's bill of exceptions, (printed record, pp. 6–35,) and in the addition thereto. Upon this evidence the defendant prayed the court to instruct the jury that, upon the whole evidence aforesaid, (if the same is believed by the jury,) the plaintiff is not entitled to recover; which instruction the court gave. To this instruction the plaintiff excepted, and the court sealed the bill of exceptions contained in record. (*Ib.*, p. 35.) Under these instructions of the court, the jury found a verdict for the defendants, on which judgment was entered against the plaintiff. To reverse this judgment the present writ of error was brought.

The facts on which this controversy arises are these:

In the year 1800, two brothers, named Francis and Charles Lowndes, were merchants, doing a shipping business in Georgetown, District of Columbia, on the north side of Water street, (also called west landing.) They owned jointly a wharf, lying between said street and the Potomac river, and fronting on each about 100 feet. On the north side of said street, and fronting parts of said wharf, Francis Lowndes owned in his own right two lots, which he had improved by the erection of warehouses and a dwelling thereon; but these two warehouses were separated from each other by a vacant lot or space of about 20 feet 3 inches, also owned by Frances Lowndes, composed of parts of original lots 35 and 38.

On part of lot No. 35, the more westerly of the improved lots, a warehouse had been erected, which was at first occupied by Frances Lowndes, and afterwards by Louis Du Blois.

On lot 38, the more easterly of the two improved lots, a double two-story brick warehouse had been erected, which was then occupied by the Lowndes, but was subsequently occupied by two other brothers, merchants, also engaged in the shipping business, named Richard and Leonard H. Johns.

The two Lowndes and one John Suter, having discounts in the Bank of Columbia, and needing an endorser on their notes in said bank, the two Lowndes had conveyed by a mortgage or trust deed in fee, dated April 29, 1800, to John Templeman, their endorser, as indemnity for his past and any

future endorsements for themselves and John Suter, the two improved lots on the north side of Water street, before described; "that is to say, (1) all their right, title, claim, and interest to a *three-story brick warehouse and part of lot No.* 35, lying on Water street, in Georgetown, *together with the wharf in front of said house*, which house, wharf, and part of said lot No. 35, they, the said Francis Lowndes and Charles Lowndes, sold to General Walter Stewart, in the year 1794, but had not conveyed," &c.; (2) "also the *three-story brick warehouse* on Water street, nearly adjoining the above-mentioned house, on the east end, *together with that part of lot No.* 38 *on which it stands*, and at present occupied by the said Francis and Charles Lowndes, together with all and singular the buildings, rights, privileges, and appurtenances thereto belonging, or any manner or wise appertaining," on certain trusts therein specified. (Printed record, pp. 7, 8.)

On the 14th of January, 1804, the two Lowndes, by their deed of that date, united in conveying in fee to the two Johns, two things: first, the said vacant and intermediate lot, fronting on Water street twenty feet three inches, marked on the diagram as the "Hellen lot," which was the sole property of Francis Lowndes, and which had not been included in the previous deed of trust to Templeman, together with the right to use the walls of the adjoining warehouses in building on the said lot; second, the perpetual right to the said Johns, their heirs and assigns, to "use the wharf built by the said Francis and Charles Lowndes, fronting one hundred and one (101) feet or thereabouts on the river Potomac, free of all expense, for the purpose, from time to time, of moving their ships or vessels, and for lading and unlading the same, and on all goods, wares, and merchandises, and also on all articles of trade and commerce whatsoever, imported or exported by them," with covenants of warranty for grant, use, &c., and subject to certain regulations more particularly described in said deed. (Printed record, pp. 8–11*.)

Under this deed the Johns went into possession, and continued to use the said lot and wharf for the purposes of their business until August 4, 1806, when, by their deed of that

date, recorded August 19, 1806, they sold and transferred their whole interest in both said pieces of property to Walter Hellen. (Printed record, pp. 11–14.)

In like manner, Walter Hellen entered into possession of them under the deed to him, and he and his tenants and his heirs continued to use and occupy the said property and wharf until November 4, 1859, when, by a deed of that date, recorded May 7, 1860, the heirs of the said Hellen conveyed both said pieces of property to A. H. Boucher, (printed record, pp. 14–17,) who also by deed, dated June 16, 1864, recorded July 22, 1864, conveyed his whole interest in the said two pieces of property to Edward M. Linthicum, the plaintiff in the court below. (Printed record, pp. 17–19.)

It will be observed that throughout all this line of conveyances, the lot and the right to use the wharf in front of it were always conveyed together.

The plaintiff also gave parol evidence, in addition, to show that the parties under whom he claimed had claimed, exercised, and enjoyed the uninterrupted right to occupy and use the wharf in question, for shipping purposes, under the deed to the Johns, from 1804 till 1864, or thereabouts, a period of about 60 years, when about that date, for the first time, it was denied and obstructed by the defendant, Ray, who, in 1858, had become a purchaser of the wharf, but who knew at the time of his purchase of the existence of this claim of right to use the wharf claimed by Boucher, one of the parties under whom the plaintiff claims; and also gave evidence to show that Ray afterwards offered to purchase from him whatever interest he might have in said wharf. (Printed record, pp. 19–20.)

The defendant, on the contrary, claimed exclusive title to the whole wharf by the chain of intermediate conveyances set forth in the record, (printed record, pp. 22–35;) not by a sale or foreclosure of the rights of the Lowndes and their grantees, under the prior deed of trust, made April 29, 1800, to John Templeman, (printed record, pp. 7–8; *ib.*, pp. 22–23;) but under a sale alleged to have been made in 1824, under a new deed of trust, made by Francis Lowndes and John Templeman to Walter Smith, upon new and different trusts,

created September 28, 1807; that is, subsequently to the date of the deed to the Johns made in 1804, under which the plaintiff claims, and while Hellen was in possession under the deed to the Johns; and after the legal satisfaction and discharge of the original trust of 1800, created solely for the individual indemnity of the trustee, John Templeman.

This general statement will be sufficient to enable the court to understand the nature of the controversy, and of the questions presented by the record.

ARGUMENT FOR THE PLAINTIFF IN ERROR.

The controversy in this case turns mainly on the question as to the *time when* the respective rights of the parties, under whom the plaintiff and defendant severally claim, began.

The defendant in error claims that his right originated under both the deed of trust or mortgage from the Lowndes to Templeman, made in 1800, and under the deed of trust to Smith, in 1807.

This the plaintiff in error denies. On the contrary, he contends:

I. That the defendant's rights to the wharf in question did not originate until the year 1807, when they originated under the deed to Smith, and that in the meantime, to wit, in the year 1804, his (the plaintiff's) rights to the said wharf originated in the deed of conveyance made by the Lowndes to the Johns, granting the lot and the joint right to use the wharf in question, now controverted for the first time since its origin by the defendant. In other words, the plaintiff contends that the defendant does not legally hold title to the wharf in question under the deed of trust or mortgage to Templeman in 1800, but that he holds exclusively under the deed of trust or mortgage to Smith, in 1807; and, if so, that he holds his right to the wharf subject to the prior right to it acquired by the Johns in 1804, under whom he (the plaintiff) claims.

But if this proposition cannot be maintained, and the defendant in error has an *exclusive* right *to any part* of said wharf, then the plaintiff in error contends:

II. That by the terms of the deeds of 1800 to Templeman, of 1807 to Walter Smith, and of 1828 to Kurtz, the title of the defendant in error does not extend to the *whole* of the wharf in question, but only *to the west part of it*, viz, to that part of it lying immediately in front of the most western of the Lowndes warehouses, and of that part of lot No. 35 on which it is situated, that part of the said wharf being the only part included in the said deeds; and that, therefore, the title of the plaintiff in error under the deed of 1804 is perfect to the use of all the residue of said wharf not so included, and lying east of the said west part.

I. The main question is partly a question of law and partly a question of fact, and as such it must be determined by the evidence, by a critical examination of the provisions of the deeds before referred to, and by the principles of law applicable thereto. It will be necessary, in the first place, to examine the provisions of these deeds somewhat in detail.

1. *The deed of trust from the Lowndes to Templeman*, dated April 29, 1800. Recorded October 10, 1800. (Printed record, pp. 7–22.)

By the recitals of this deed it appears that *Charles Lowndes, Francis Lowndes, and John Souter*, were indebted to the Bank of Columbia in the sum of $9,450, by their promissory notes, endorsed by John Templeman. In order to "*indemnify him* (Templeman—*not the Bank of Columbia*) from *possible* liability to be incurred by him on said notes, or other notes of said parties which might thereafterwards be endorsed by him, (Templeman,) this deed of trust or mortgage was given to him for his protection, including, among other property, part of the lots and wharf now claimed by the defendant.

In case of the failure of the Lowndes and Souter to pay said notes, or either of them, and in case Templeman should be obliged to pay them, then he (Templeman) was authorized to sell the said property, *for cash* or *on credit*, at public sale, after giving five days' public notice, and to apply the proceeds, or so much thereof as might be necessary, to pay said notes, and thus to *indemnify himself*.

Now, it will be observed that the *bank was no party to this*

deed. The bank had discounted the notes of the Lowndes and Souter upon *their personal credit*, and that of their endorser, Templeman. This deed of trust was a private security, between two of the drawers and Templeman, their endorser, for his *personal* indemnity against loss.

The first question on this deed will be, what was the nature of this security, and what rights did it confer on Templeman as against the Lowndes and the Johns, their grantees. This question will be considered hereafter.

2. *The deed of conveyance from the Lowndes to the Johns*, dated January 14, 1804. Recorded February 11, 1804. (Printed record, p. 8–11.)

This is the deed under which the plaintiff derives title. By this conveyance, as before stated, the Lowndes conveyed to the Johns the property now owned by the plaintiff, including an equal right to use the wharf in question, *with covenants of warranty.* The lot conveyed by this deed was the individual property of *Francis* Lowndes, and was not included in the prior deed to Templeman, but the wharf so included was the *joint property* of both Charles and Francis Lowndes, and this deed was made in order to make the Johns joint owners with themselves in the use of the wharf.

Now, it is true that at the time of this conveyance the deed of trust from the Lowndes to Templeman, including the wharf in question, was on record, and that the Johns thereby had *constructive* notice of it. There is no evidence to show that they had *actual* notice of it. But, whether they had or not, the result is the same. In either case they would only be fixed with notice of its real nature and legal effect, viz: that it was a mere precautionary indemnity against possible loss, and that Templeman was directly trustee for the Lowndes, their grantors, and indirectly for themselves, as their alienees, and that the conveyance made to themselves was good, unless the conditions of the trust should be broken, *in which case the trust could be enforced only by adverse proceedings in the manner prescribed by the trust deed*, against which they had for their protection the covenants of warranty for the free and quiet

enjoyment of the right to use the wharf, which had been given them by the Lowndes.

3. *The deeds of trust from Templeman and Francis Lowndes to Walter Smith*, dated March 4 and September 28, 1807. Recorded November 28, 1807. (Addition to record, p. 3; Printed record, p. 23, &c.)

This last is the deed under which the defendant derives title to the property in question, by adverse proceedings and sale, according to the terms of the trust, in the year 1824.

At the date of this deed of trust, it is also true that the deed of the Lowndes, with their warranty to the Johns, and the deed of the latter to Hellen, were both upon record. The parties to it also had actual or constructive notice of these deeds, and of the use of the wharf under them by the Johns and Hellen, their grantee. In full view of these deeds, and most probably with actual notice of these facts by all the parties, this new deed of trust was made. The parties to it, therefore, had either actual or constructive notice of the right to the joint use of the wharf, acquired by the Johns and Hellen under the prior deed of 1804, and *as against them* they could do nothing to defeat that conveyance, except by adverse proceedings, conducted in strict compliance with the terms and conditions of the deed of 1800 to Templeman.

The whole difficulty and obscurity in the case arise from the fact that Templeman, in whom the legal title was vested by the deed of 1800, *united* with Francis Lowndes *to create the new deed of trust* to Smith in 1807. This act in itself, and unexplained, is *ambiguous*. It may have been intended to be adverse to the right of the Johns, or it may have been intended *to avoid circuity of conveyance* from Templeman back to Lowndes, and from Lowndes to Smith, and thus to *be in subordination to the rights which the Johns had acquired*. The plaintiff maintains the latter theory; the defendant the former. The defendant imputes *illegality* and *fraud* to the conduct of the parties to the deed. The plaintiff, on the contrary, maintains that they acted honestly and legally, and attempted to do nothing but what could legally and honestly be done.

Which of these is the true theory of the case is the question now to be determined.

The recitals of these two deeds and their subsequent provisions throw great light on this question. The first deed of March 4, 1807, recites as follows:

"Whereas Francis and Charles Lowndes, being largely indebted to the Bank of Columbia, on *notes endorsed by John Templeman*, did, on the 29th day of April, in the year 1800, mortgage or convey in trust to John Templeman the following described property, amongst other property, to SECURE HIM FOR HIS SAID ENDORSEMENTS; and whereas *Charles Lowndes* hath provided for a payment of part of the debt, then still remaining due to the Bank of Columbia, for *which the said Templeman is liable by being endorser*, in consequence of which *a part of the property* mortgaged to said Templeman as aforesaid *has been conveyed to Benjamin Stoddart*, at the request of said *Charles Lowndes;* and *Francis Lowndes hath agreed to* EXONERATE *the said Templeman from the remainder of the said debt or debts*—that remainder amounting *on this day* to the sum of eight thousand four hundred and eighty-seven dollars—*by passing* HIS OWN NOTE to the *bank therefor*, with his *son Francis Lowndes, jr.*, as *his endorser, and the bank has agreed to take* THE SAME AND TO EXONERATE THE SAID TEMPLEMAN FROM ALL RESPONSIBILITY THEREFOR; and the said *Francis Lowndes* being *desirous to secure the payment* THEREOF to the said *Bank of Columbia*, as well as to *secure his said son, Francis Lowndes, jr.*, for his endorsement or endorsements: Now, this indenture witnesseth, that the *said Francis Lowndes and John Templeman, in consideration of the premises,*" convey, among other property, the lot, and part of the wharf in question, now held by defendant in error, to Walter Smith, upon the trust following: "That is to say, that at any time hereafter, WHEN *thereunto requested by the President and Directors of the said Bank of Columbia*, it shall be the duty of the said Walter Smith, his heirs or assigns, as the case may be, to advertise and sell at public sale, FOR READY MONEY, to the highest bidder, all the property hereby given, granted, bargained, and sold, and such part or parcel thereof as he or they may deem necessary and competent to

answer the purpose of such sale, *giving* THIRTY *days' previous and public notice of the time and place of such sale* by ADVERTISEMENT IN SOME NEWSPAPER PRINTED IN GEORGETOWN OR IN THE CITY OF WASHINGTON, and out of the *money* arising from such sale to pay, first, the necessary expenses attending the advertising and conducting such sale; and secondly, to pay the said President and Directors of the aforesaid Bank of Columbia the amount for principal, interest, and costs of protest, due *upon all the notes unpaid, in whole or in part, upon which the said* FRANCIS LOWNDES NOW STANDS AS DRAWER, and which HAVE BEEN DISCOUNTED in said bank, and now in possession of said president and directors, as *also* the amount for principal, interest, and costs of protest due upon *all notes* unpaid, *in whole* or in part, *upon which the said Lowndes* MAY BE DRAWER, and the *endorser thereof Francis Lowndes, jr., and* WHICH MAY BE HEREAFTER DISCOUNTED AT SAID BANK; and, lastly, to satisfy and pay over the overplus, if there be any, to *the said Francis Lowndes*, his heirs and assigns. In witness whereof," &c.

The second deed of September 28, 1807, recites and refers to this first deed, and is substantially the same.

In short, these deeds recite: first, the partial payment of the debt of Charles and Francis Lowndes and John Souter to the bank by a sale of part of the mortgaged premises, (*to which there could be no objection, as no adverse rights had arisen in regard to it,*) with an implied exoneration of Charles Lowndes and John Souter from all liability on account of that debt to the bank; second, the assumption of the residue of that debt by Francis Lowndes as his individual debt, and the acceptance by the bank of a new note, with a new endorser therefor; third, the mutual exoneration of Templeman, by Francis Lowndes and the bank, from all liability as endorser on account of said debt, and the consequent legal satisfaction of the conditions of the original trust to Templeman.

It therefore provides for the creation of a new trust, by new parties, to a new trustee, for new beneficiaries, to secure what was technically a new debt, viz, a new note, given by one of the parties for a reduced amount, with a new endorser,

which had previously been accepted by the bank; which trust was to be enforced at the will and pleasure of the bank, and the endorser, the new beneficiaries, in a new and different manner, and upon new and different terms and conditions, as will be seen by comparing the deed of 1800 with the deed of 1807.

4. It also appears from the evidence that the right claimed by the plaintiff was claimed and exercised from the beginning by the Johns, by Hellen, and by their vendees, without objection from any quarter, for upward of half a century, and that the defendant is the first to question or to obstruct its exercise. (Bill of exceptions, printed record, p. 19.)

In view of these facts, the plaintiff, in support of his first general proposition, before stated, submits the following subordinate legal propositions:

1. The deed from the Lowndes to Templeman was merely a deed of trust, in the nature of a mortgage, by way of indemnity against possible loss and injury by Templeman as their endorser. Indeed, it is so expressly called in the deed itself and in the subsequent deed to Smith.

Until condition broken, Templeman then was a mere naked trustee of the legal title for the Lowndes, and held it subject to their right to encumber the property or dispose of it to others. He had *no absolute* right to the property, and unless he had to pay the notes, for the payment of which he held it as a security, *he never could acquire any.* His rights, therefore, were entirely *contingent* and *conditional.*

Except as against the mortgagee, the mortgagor, while in possession and before foreclosure, is regarded as the real owner. (4 Kent's Com., pp. 153, 154.) As respects third persons, the mortgagor is treated as the real owner, to all intents. (7 Serg. & R., 419. See cases collected in 2 Wharton's Dig., tit. Mortgage.)

The mortgagor may bring an action of ejectment, to support which a *legal*, and not an *equitable*, title is held to be the necessary basis of such an action.

Upon the exoneration of Templeman from liability for the debt of the Lowndes and Souter, he had *no adverse* right to

the property which he could convey. (1 Peters, U. S. R., p. 441; 12 *ibid.*, pp. 204, 205; 3 Cranch, C. C. R., 325, 333.)

Thy first mortgage was satisfied and extinguished, both at law and in equity. (See 1 Hilliard on Mortgages, edit. of 1856, p. 447 and notes; p. 461–475, §§27, 27 (*a*,) (29 (*d*,) 29 (*e*,) 29 (*f*,) 50; p. 478, §§57–59.

That this was the view of the Lowndes is shown by the fact, that notwithstanding the deed to Templeman they had conveyed a joint interest in the wharf to the Johns, with covenants of warranty, for quiet enjoyment, &c.

2. The primary liability of the *endorser* of a promissory note is only *contingent*, and does not become positive until *fixed* by the failure of the promisor to pay it on presentment and due notice thereof to the endorser. (Story on Prom. Notes, secs. 135, (5,) 198, 230; Story on Bills of Exchange, secs. 109, 112, 176, 272, 274.)

Now, there is no evidence in this case to show that any default had ever been made by the drawers of the notes endorsed by Templeman, or, if so, that his liability as endorser had been fixed therefor by notice of their defaults. On the contrary, the evidence shows conclusively that no default had been made; that the original debt had been reduced from $9,450 to $8,487, by a voluntary payment of part of it by a sale of part of the mortgaged property not included in the deed to the Johns; that the old debt of Francis Lowndes, Charles Lowndes, and John Souter, thus reduced, had been converted into a new individual debt of Francis Lowndes, with a new endorser, which the bank had accepted in payment of the old, and in consideration thereof had expressly exonerated Templeman, (and impliedly two of the original debtors,) from all liability on account of his endorsements. All this was done, it appears, *prior* to the conveyance to Smith, because it is expressly stated in the deed to him that it was made as security for "all notes unpaid, in whole or in part, upon which the said Francis Lowndes *now stands* as drawer, and *which have been discounted* in said bank, and *now in possession* of said president and directors," &c.

3. That the liability of an *endorser* is discharged by the

acceptance by the creditor, as in this case, of a new note from the debtor, with a new endorser. He has no right to accept anything but *money*. (Story on Prom. Notes, sec. 389, n. 3.)

4. That the original debt of Charles Lowndes, Francis Lowndes, and John Souter, both as to the original debtors and their endorser, John Templeman, was *legally satisfied* by the facts and circumstances which *preceded* the creation of the trust in the hands of Smith, viz, first, by the part payment of the debt by Charles Lowndes; second, by the discharge of Charles Lowndes and John Souter, two of the original debtors; third, by the acceptance of a new note of Francis Lowndes, with a new endorser; fourth, by the express exoneration of John Templeman, their former endorser, from all responsibility on account of that debt.

A new note taken for an antecedent debt is a payment or satisfaction of it, when such is the intention of the parties. (Story on Prom. Notes, secs. 104, 404, 408, 4382; American Lead. Cases, Hare & Wallace's notes, p. 179, and authorities there cited; 3 Wallace U. S. R., p. 45.)

But *this intention* may be shown, not only by express words, but by reasonable implication, from all the attendant circumstances. (Story on Promissory Notes, secs. 104, 406, (2,) 408, (2,) (5.)

The intention is abundantly shown by the facts and circumstances before enumerated. If, however, there was any doubt about it, *this was a question of fact, which should have been submitted by the court to the jury*, (2 American Leading Cases, Hare & Wallace's notes, p. 196,) and the court below erred in taking it away from the jury.

5. Whatever the fact may be, as to the satisfaction or legal payment of the original debt, as to all the original debtors, as such, there can be none as to the exoneration and discharge of John Templeman, their endorser, because this fact is expressly declared in the deed to Smith.

1. But it may be argued that the transfer of his title by Templeman to Smith was a *part of the consideration* for his exoneration as endorser by the bank, and that therefore the

debt and trust were not extinguished, but were thereby kept on foot for the benefit of the bank.

The first conclusive answer to this argument, however, is this: that *it is not so declared in the deed to Smith.* On the contrary, his exoneration is declared *unconditionally.* It was full and free, and had been *effected before the creation of the trust* to Smith, by the previous acceptance of a new note, with a new endorser as security for the payment of the new debt. He had been discharged, both in law and in fact, *before* the attempt was made to create a new trust for the benefit of the bank and the new endorser, Francis Lowndes, jr.

The bank was not bound, in the first instance, to enter into the new arrangement. It might have held all the original debtors, and Templeman, their endorser, and thereby have compelled Templeman, for his own indemnity, *to proceed adversely under his trust deed,* and thus have subjected the mortgaged property to the payment of the original debt. But the bank did not choose to do so. In a spirit of accommodation, it chose to make a new arrangement, and it must abide the legal consequences of it, when the rights of *third parties* had intervened.

The second conclusive answer is:

That *the rights of third parties, of the Johns and Hellen, their grantee, had intervened,* and that the old trust could not voluntarily be transferred, nor a new one created, *except in subordination to those rights,* and consequently that no such stipulation could legally be made adversely to their rights, without their consent, which is not shown.

1. *Templeman* could not do so. First, because he had *no adverse interest* in the property, not having sustained any injury by being obliged to pay any part of the debt. Second, because, even if he had such an adverse interest as trustee, he could convey only in the manner and for the purposes expressed in the deed of trust.

4 Kent's Com., 10th edition, p. 377.
Blackwell on Tax Titles, p. 31, 34–38, 42, &c., 53–56.
Sugden on Powers, edit. of 1856, p. 214, 250, &c., note (1.)
Hill on Trustees, p. 478, note; *ib.* p., 480, note (1.)
1 Peters U. S. R., p. 145.

As a consequence of this proposition, he, as trustee, could not, without express authority in the deed of trust for that purpose, create a new trust in another party, as was done in this case, with different limitations, and for the benefit of different parties. *Delegatus non potest delegare.*

Broom Leg. Maxims, (4 English edition,) p. 806–809.
Story on Agency, sections 14, 15, 17.
Hill on Trustees, p. 175, 186, marg. page.

2. The *Lowndes* could not do it, because they had, previously to the creation of the new trust, viz, in 1804, conveyed a joint interest with themselves in the wharf property to the Johns, with covenants of warranty for quiet enjoyment, &c. If both could not do it, it is very certain that Francis Lowndes *alone* could not do it. Charles Lowndes also had a *special* adverse interest in the matter. Being exonerated from the debt, but being bound by his covenants of warranty to the Johns in regard to the wharf, he had a right to insist that, the original debt being satisfied, the trust in the hands of Templeman should result for the protection of the Johns, as their alienees, and for his own protection against his covenants.

3. The *bank* could not do it. First, because it was no party to the original trust. Second, because it was affected with legal notice of the prior rights of the Johns, and could not by a private arrangement, behind their backs, acquire a new security paramount to their rights.

5 Binney R., 589–90.
2 Barr (Penn.) R., pp. 96, 98–100.
12 Casey, (*ib.*,) 141, 170.
4 Kent Com., p. 175.

To hold otherwise would be to sanction a *fraud* on the part of all the parties to the new trust against the Johns and their alienee without the slightest legal necessity, and contrary to the subsequent conduct of the parties.

The true explanation of the object of the conveyance to

Smith, made by Francis Lowndes and John Templeman, is, that *it was done simply to avoid circuity of conveyancing*, and *was made in strict subordination to the prior rights of the Johns*, as the alienees of the Lowndes. Receiving this construction, it was honest and legal; receiving the contrary construction, it was dishonest, illegal, and void, as to the adverse interest of the Johns.

2. But it is suggested that the Johns and their grantees were *guilty of laches* in the assertion of their rights; that they allowed the deed to Smith to be made without objection, and that they suffered the subsequent sale under it to be made without asserting their rights for half a century, &c.

The conclusive answer to this suggestion, however, is, that there is no evidence to show that the Johns and their grantees had any actual knowledge of the transactions subsequent to the conveyance to them in 1804.

But whether they had or not is entirely immaterial. The evidence shows very fully that the Johns and their alienees, Hellen and others, both before and after the deed to Smith and the sale under it, entered into possession of the wharf under their deed, and continued to use it without objection on the part of Templeman, of the Lowndes, of Smith, or of those holding under him, as occasion required, until the year 1864, when, for the first time, objection was made by the defendant, and the pretence set up that he was entitled to the exclusive possession of the wharf. The evidence also shows that the defendant knew of the existence of the right now asserted by the plaintiff, and offered to buy it. (Printed record, p. 19.) There being no obstruction made to the exercise of this right prior to that made by the defendant, there was no denial of it, and consequently no necessity for them to object, or to assert it by legal proceedings. Being undisturbed in the exercise of their rights, they had a right to believe, and did believe, that no adverse right was asserted, and that all that was done under the new trust was in strict subordination to their prior right to the wharf. The conduct of the parties on both sides thus gave contemporaneous and practical construction to their respective rights, and it shows that all that was done, or in-

tended to be done, by the parties, from the beginning, was done in subordination to, and in recognition of, the rights to the wharf acquired by the Johns. The question now is not whether *new rights shall be acquired* to the wharf after the lapse of half a century, but whether, after their recognized existence by all adverse parties prior to the defendant, and their exercise by the parties under whom the plaintiff claims for that period of time, they shall now be overthrown and disregarded by the defendant. It is a mistake, therefore, to suppose that there has been any laches in the assertion of this right.

On the contrary, it may more fairly be argued, that this right, having been recognized so long—whether strictly legal in the beginning or not is immaterial—it has ripened into an adverse legal title, and it is now too late to begin to deny it.

The result, therefore, is, that the court below erred in its instructions to the jury on this branch of the case, and that the judgment should be reversed.

II. But if our first proposition cannot be maintained, then, applying the same technical mode of reasoning by which it was defeated, we insist on our second leading proposition, viz :

That by the terms of the deeds of 1800 to Templeman, of 1807 to Walter Smith, and of 1828 to Kurtz, the title of the defendant in error does not extend to the *whole* of the wharf in question, but only *to the west part of it*, viz, to that part of it lying immediately in front of the most western of the Lowndes warehouses, and of that part of lot No. 35 on which it is situated, that part of the said wharf being the only part included in the said deeds; and that, therefore, the title of the plaintiff in error under the deed of 1804 is perfect to the use of all the residue of said wharf not so included, and lying east of the said west part.

The truth of this proposition will be evident from an examination and comparison of the language of the deeds under which the plaintiff and defendant respectively hold.

There can be no doubt as to the *intention* of the Lowndes

in their deed of 1804, to grant to the Johns and his assigns the perpetual right to use *the whole wharf.*

The grant of the right to use this wharf is in these words:

"And they, the said Francis Lowndes and Charles Lowndes, do hereby also grant unto the said Richard Johns and Leonard H. Johns, *their heirs and assigns*, the privileges and rights of using the wharf built by the said Francis and Charles Lowndes, *fronting one hundred and one feet, or thereabouts, on the river Potomac*, free of all expense, for the purpose, from time to time, of mooring their ships or vessels, and for loading and unloading the same, and on all goods, wares, and merchandizes, and also on all articles of trade and commerce whatsoever imported or exported by them. The said wharf is the same, nearly opposite to the said brick warehouse now occupied by the said Richard Johns and Leonard H. Johns, and contained within the lines of the piece of ground contracted to be conveyed to the said Francis and Charles Lowndes by Charles Beatty; that is to say, as to the easterly forty-one feet, the said Lowndes possessing only an *uncertain* interest, *grant as to that part thereof only the same kind of interest*, and promise and covenant to procure, if they can, the *certain* interest in the same; and as to the westerly sixty-feet, fronting as aforesaid, they, the said Lowndes, hereby covenant and agree, to and with the said Johns, that they, the said Johns, their heirs and assigns, shall, whenever they may hereafter have occasion and use for the same, have and enjoy, freely, quietly, peaceably, and uninterruptedly, the free use and privileges of the said last-mentioned sixty feet of the said wharf, fronting as aforesaid, against all manner of persons and claims whatsoever, *except as to the said Francis and Charles Lowndes themselves, for their own vessels and goods*," &c., with other covenants to secure equality of rights in the use of said wharf between the said Francis and Charles Lowndes and the said Johns, their heirs and assigns. It is also agreed at the close of the deed as follows:

"It is not intended by the above deed that the said Lowndes shall, *at all events*, be *compelled* to procure the *certain* interest in the forty-one feet of ground in the said deed mentioned;

but it is understood that the *certain interest* therein mentioned; shall be procured by them when it can be done *on reasonable and proper terms.*" (Printed record, pp. 9, 11.)

The particularity in the description of the wharf, its dimensions and extent on the Potomac river, the covenants for perfecting the title to the eastern forty-one feet of the wharf, if it could be done on reasonable terms, and also the covenants for the quiet use and enjoyment of the western sixty feet of the wharf, all combine to render the *intention* of the Lowndes to grant to the Johns, their heirs and assigns, the *perpetual right to use the whole of said wharf* in connection with their lot.

In passing, it will be observed that the right to use this wharf is not claimed as "a *right, privilege*, or *appurtenance*" to the grant of the lot on the north side of Water street, *but under an express grant of the thing itself by name.* It will also be observed that the grant is *not restricted*, as was suggested in the argument for the defendant in the court below, *to the use of the artificial or wooden part of the wharf*, but that it extends to the wharf *as a whole*—including all south of Water street—both lot and artificial structure.

But if this *intention* of the grantors cannot be executed, for technical reasons, to its whole extent, then, on the principle, "*ut res magis valeat, quam pereat*," it should be carried out as far as possible. And for this purpose let us examine the language of the deeds under which the adverse right is claimed.

The deed of 1800 from the Lowndes to John Templeman conveys to him, "his heirs and assigns, forever, all and singular the hereinafter described property, that is to say: all their right, title, claim, and interest to *a three-story brick warehouse and part of lot number* 35, lying on Water street, in Georgetown, *together with* THE WHARF IN FRONT OF SAID HOUSE," &c.; also the three-story brick warehouse on Water street, nearly adjoining the above-mentioned house, *on the east end*, together with that part of lot number 38 on which it stands, &c., *together with all and singular the buildings, rights, privileges, and appurtenances* thereto belonging, or in any manner or wise appertaining." (Printed record, p. 7–22.)

Now, by an inspection of the survey and diagram exhibiting the locality of the wharf and warehouses described, it appears that only a part of the wharf is actually in front of the western warehouse, and that such part is limited to the present water lot No. 40; and further, that the residue thereof, in front of the Hellen lot and of the eastern warehouse, was not included in said deed, unless it should be claimed that it passed as an incident or appurtenance to the grant of the eastern warehouse and of the lot on which it stands. But this would be to make *land* pass as *appurtenant* to land; and if the eastern part of the wharf should pass as *appurtenant* to the eastern warehouse and lot, then, for the same reason, the middle part of wharf should pass as appurtenant to the Hellen or Linthicum lot, which, it is admitted, was not included in the first deed of 1800, and is now owned by the plaintiff in error. But this doctrine is expressly repudiated by the counsel for defendant in error. The result, therefore, is, that the deed of 1800 conveyed no part of the "wharf" (whether it is regarded as *land* or *artificial structure*, or *both*) except *that part immediately in front of the western warehouse;* and consequently, that the residue thereof was not included in or conveyed by the said deed, either expressly and by name or as an appurtenance to the eastern warehouse or lot. If so, then the deed of 1804 to the Johns, if it could not convey a clear and unincumbered right to the use of the *whole wharf*, certainly could and did convey a clear and unincumbered right to the use of *the eastern part of the said wharf, not included in the deed of* 1800.

This conclusion is confirmed by the subsequent deeds of 1807 to Walter Smith, and of 1828 to Kurtz.

The language of both is substantially the same, and follows closely the language of the first deed of 1800. (Printed record, pp. 22–28.)

It is only in the deed from the Bank of the United States to Bomford, in 1836, that the claim to the whole wharf is first asserted; and then it is done *cautiously*, and under the protection of a *special warranty*, "that the bank will warrant and defend against all persons claiming or to claim by,

through, or under it, and that it has done nothing to encumber the premises granted, or to prejudice the title to the same."

The bank grants by said deed, "*all that lot of ground* in old Georgetown, on the south side of Water street, *said* to be 100 feet front, *lying in front of a large warehouse formerly occupied by Francis Lowndes*, as the same was conveyed to the Bank of the United States, in the deed hereinafter mentioned, being the same property which was conveyed by Walter Smith, trustee of Francis Lowndes and John Templeman," to the Bank of the United States, by deed bearing date September 9, 1828, &c. (Printed record, pp. 28–29.)

It will be observed that, in this last deed, the "*wharf* in front of the brick warehouse, on lot No. 35," conveyed by Walter Smith, under the deed of September 28, 1807, means "*a lot of ground*" *said* to be 100 feet front, but it is only the same interest conveyed under the previous deeds; and, as we have seen, the deed of 1807, under which the sale was made, was made *after* the deed of 1804 to the Johns, under which the plaintiff in error claims, and uses language not so strong as that of the deed of trust made in 1800.

In this aspect of the case, therefore, it follows, that, if the defendant in error has any *exclusive* right to the wharf, it must be limited to the western part of it, in front of the brick warehouse named, and that the plaintiff in error has a clear and irresistible right to the uninterrupted use and enjoyment of the residue or eastern part thereof, to which the defendant in error has no title whatsoever.

In the court below, it was argued by the counsel of defendant in error, that the right granted to the Johns to use the wharf was a mere *license*, a mere *personal privilege*, an easement in *gross*, and therefore not inheritable or assignable.

But this position is negatived by the facts, that it was granted to the Johns, "*their heirs and assigns;*" that it was granted in connection with the lot on the north side of Water street, and was evidently intended to be used in connexion therewith for commercial purposes; and, further, that the lot

and the right to use the wharf have always, from the beginning, been coupled together, conveyed together, and used and enjoyed together, until the denial of the right by the defendant in error.

The learning on this subject will be found collected in Washburn on Easements, ed. of 1863, p. 5, § 5; p. 8, § 11; p. 22, § 9; p. 28, § 1 and 2; p. 16, § 5.

The right to use the wharf was *an interest in land*, which by the law of Maryland (which prevails in the District of Columbia,) was required to be *recorded*. (Hays *vs.* Richardson, 1 Gill. and Johns. Rep., p. 376.) See also 3 Kent's Com., ed. of 1860, p. 608–610, and notes.

It was also contended, that the right had been lost by non-user. But no length of non-user bars a right granted by deed, unless there has been a corresponding *adverse* user.

Washburn on Easements, p. 550, § 1 and 2.
3 Kent's Com., ed. of 1860, p. 601, and note (*b.*)

There has been no such adverse user in this case.

On general principles, the right to use a *wharf* in common, is of the same nature as the right to use a *warehouse* in common, and, commercially, is just as valuable a right, as we see by the evidence in this case.

The grant being by deed and recorded, not secret, is like any other subordinate interest on real estate, carved out of it by its owner, and it must therefore be governed by the same general principles. In the nature of things, and according to the principles of public policy prevailing in America in regard to the alienation of lands, there is nothing to prevent the creation and continuance of an independent easement or incorporeal hereditament in a wharf, with the qualities of assignability and transmissibility. On the contrary, the interests of commerce require the preservation and protection of such rights, and we hope to see them vindicated by the judgment of the court in this case.

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Attorneys for plaintiffs in error.

Supreme Court of the United States.

EDWARD M. LINTHICUM, PLAINTIFF IN ERROR,

vs.

ALEXANDER RAY.

In Error to the Supreme Court of the District of Columbia.

BRIEF FOR DEFENDANT IN ERROR.

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Supreme Court of the United States.

EDWARD M. LINTHICUM
vs.
ALEXANDER RAY.
} No. 81—Dec. T. 1869.

Brief of Defendant in Error.

This is an action on the case for obstructing the plaintiff's enjoyment of an easement, consisting of a right to use a certain wharf.

The plaintiff claims to own twenty feet lot on the north side of Water street, Georgetown, between two brick warehouses. On the south side of the street was a lot, now divided into three, running a few yards south to the river, on which was formerly a wharf.

The twenty feet lot was conveyed by Francis Lowndes to R. & L. H. Johns, by deed dated *January* 14, 1804, with its appurtenances. In the same deed Charles Lowndes unites with Francis to convey also, to the Johns, their heirs and assigns, the privilege and right of *using the wharf built by Francis and Charles Lowndes*, fronting 101 feet on the Potomac river, free of all expenses, for the purpose, from time to time, of mooring their ships or vessels, and loading and unloading them, and all articles of trade, &c., imported or exported by them, &c. The wharf is described as the same nearly opposite the said brick warehouse, now occupied by said R. & L. H. Johns, and contained within the lines of the

piece of ground contracted to be conveyed to said Charles and Francis Lowndes by Charles Beatty, &c. The plaintiff claims to derive title, through sundry *mesne* conveyances, to the lot, and further, the right of wharfage as an easement appurtenant to the lot.

Defendant's Title.

On the 29*th April*, 1800, Charles and Francis Lowndes conveyed the brick house west of the twenty feet lot, *together with the wharf in front of the same*, (being the same wharf above meutioned,) to John Templeman, in trust, to indemnify him, as their indorser of certain notes in the Bank of Columbia, with power to sell, so as to enable said Templeman to pay into bank the notes which Templeman had endorsed or might thereafter endorse on account of said Francis and Charles Lowndes and John Suter, or either of them, which should not be taken up by them when due. (P. 22 of Record.)

On the 28th of September, 1807, Francis Lowndes and John Templeman conveyed the same property to Walter Smith by deed, reciting that part of the debt secured by the deed to Templeman had been paid by sale of part of the property to Stoddert; that Francis Lowndes and the Bank of Columbia had agreed to release Templeman as indorser, upon Francis Lowndes passing his own note, with his son Francis Lowndes, Jr., as indorser, to the bank for the unpaid balance of the debt, and Francis Lowndes wished to secure the same, as well as to secure Francis Lowndes. Jr., for his indorsements, and therefore the property is conveyed to Walter Smith, in trust, to sell whenever requested by the bank to pay the notes on which said Francis Lawndes is drawer, now in said bank, &c. (P. 23 of Record.

In 1824, Walter Smith sold under this deed, and in 1828 conveyed to the Bank of the United States. (P. 26 of Record.)

By sundry mesne conveyances, the property came to the defendant in 1858. (Pp. 26–34 of Record.)

R. & L. H. Johns occupied the twenty feet lot and used the wharf a few years after receiving their deed, but both have been vacant and unoccupied ever since about the year 1817, except for two years between 1841 and 1845, until the defendant purchased in 1858. The original wharf had disappeared. Defendant built a new one and has had exclusive possession since 1858.

POINTS:

1. The exceptions taken at the trial are not properly before this Court. They were not properly before the Supreme Court of the District of Columbia, *in General Term*. Under the act of Congress organizing that Court, the exceptions could only come before that Court by a motion for a new trial on the bill of exceptions. No such motion was made; consequently nothing was before that Court except the record, consisting of the pleadings, verdict, and judgment. In these there was no irregularity, and consequently the Court in General Term could do nothing else than affirm the judgment. There was no error in this. The present writ of error is to the Court below in general term, and as no error appears in the record, there is no ground for reversal.

Even if there were any irregularity in the judgment of the Court in generel term, it would avail the plaintiff noth ing to reverse it.

The judgment rendered in the Circuit Court remains in full force. The verdict was rendered on the 19th of Janu-

ary, 1867. Under the rules of the Court, motiou for a new trial must have been made within four days. (See Rules.) None was made, and judgment was rendered April 29, more than three months afterwards. The plaintiff is without relief against this judgment. No writ of error will lie to reverse it, and the present writ was not intended to. Writs of error will lie only to review the judgments of the Court in general term. (See act of March 8, 1863; 12 Stat. at Large, p. 761;) The whole theory of this act is, that causes can only be brought to this Court through the Court below in general term. (See Johnson vs. Whitlock, 12 How. Pr. R., 57; Hollister Bank of Buffalo vs. Vail, 1 Smith, (N. Y.,) 593, for construction of New York code.

2. The right to use the wharf was not made appurtenant to the twenty feer lot by the deed to R. and L. H. Johns, but was a mere easement in gross, not assignable, and consequently never acquired by defendant. (P. 8 of Record.)

Incorporeal interests, *which are mere accommodations*, on the land of another, as distinct from *a right to the profits*, are mere easements, and, when granted in gross, are not assignable, but merely personal to the grantee.

See Washburne on Easements, pp. 8, 23; Ackroyd vs. Smith, 10 C. B., 67, 164; 9 Id., 689; 70 E. C. L., 164; 3 Kent's Com., 338; Comyn's Digest, Commons, (H;) Burton on Real Property, 361, 362; Woolrych on Ways, 16; 2 Blackstone, 35; Garrison vs. Rudd, 19 Ill., 558.

3. Even if the wharfing privilege could be regarded as appurtenant, the plaintiff failed to show title to the lot. After giving in evidence a deed from Richard Johns and H. Leonard Johns to Walter Hellen, (Record, 11,) another one was introduced from Adelaide Hellen, Mary C. Adams, and Johnson Hellen and wife to Alfred H. Boucher, (Record

14,) who subsequently conveyed to the plaintiff; but no evidence was offered to show that the grantors in said deed to Boucher were the heirs or devisees of Walter Hellen, or bore any relation to him.

It is submitted that this failure of evidence on the part of the plaintiff was fatal to his claim of title.

4. It is apparent, however, that it was never intended to attach to the lot claimed by the plaintiff the general right of wharfage. On this point the language of the deed from Francis and Charles Lowndes to Richard and Leonard H. Johns, (Record, 8,) is most explicit. The deed calls for the "right of using the wharf built by the said Francis and Charles Lowndes, fronting," &c.

It is evident the design was to grant only the right of using the structure then in existence, and which many years ago rotted away, as shown by the evidence. (Record, 20.)

There is no provision for repair or reconstruction, nor anything to indicate an intention to attach to the lot claimed by the plaintiff, a general right of wharfage, or any privilege of longer duration than the wharf then existing. The grant of the right to use a wharf is totally different from that of a perpetual easement.

5. The deed of April, 1800, prior to that to Johns, followed by the deed from Templeman to Walter Smith and the other deeds, down to the defendant, passed the title to the defendant free of the easement claimed by the plaintiff.

The notes being overdue, Templeman might have sold and conveyed absolutely. Instead of that, he conveyed only conditionally, that is. by deed of trust, giving the debtor further time. The greater power included the less. A power to sell includes a power to mortgage. Hill on Trustees, pp. 355, 475, &c.

Again, the bank holding the notes were interested in the trust; Hill on Trustees, pp. 337, 338. The Templeman and the Lowndes had a right to change the form of the debt, without affecting the security; Ellicott vs. Sleeper, 2 N. H. Rep.. 525; Davis vs. Maynard, 9 Mass., 242; and could agree to substitute a new trustee and extend the time.

The deed of Templeman to Smith was therefore fully authorized by the terms of his trust and the title derived under it is valid in equity as well as at law.

But if there is any irregularity, in an equitable point of view, still, the legal title, passed and divested all the legal title from those under whom the plaintiff claims. The legal estate has been deld by the defendant, with the possession, for ten years, while the claim of the plaintiff has not been asserted for fifty years. It is submitted, that the plaintiff is not in condition to maintain a suit at law.

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Supreme Court of the United States.

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Supplemental Brief for Defendant in Error.

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Supreme Court of the United States.

No. 81—December Term, 1869.

EDWARD M. LINTHICUM, PLAINTIFF IN ERROR,

vs.

ALEXANDER RAY.

Supplemental Brief for Defendant in Error.

A few additional remarks are submitted in reference to the deed from Francis and Charles Lowndes to John Templeman, dated April 29, 1800, which is the foundation of defendant's title.

Its object is to secure and indemnify Templeman from loss, as indorser of certain notes of the Lowndes and Suter, in the Bank of Columbia. It authorizes Templeman, from time to time, *to sell and dispose of* the property, *for cash or otherwise, as he may think proper*, so as to enable him to pay in bank the said notes which he had indorsed, or any that he might thereafter indorse, on account of the Lowndes and Suter, or either of them, *which should not be taken up by them when due.* This deed transferred the legal title to Templeman, leaving only an equity of redemption in the Lowndes. Under this deed, when the notes were due, he

might have sold absolutely, and thus forever extinguished the equity of redemption and all interests subsequently created by the Lowndes, including the easement granted to the Johns. Instead of this, and instead of exceeding his powers, he acts far within them. He sells conditionally, and for the benefit of the debtors. He conveys to Walter Smith, subject to the condition that the debtors may have further time and indulgence, for the redemption of the property, and requiring thirty days' advertisement before it can be sold, on their failure to redeem. Instead of selling for cash, he takes the debtor's own new notes and passes them to the bank, which agrees to receive them, in satisfaction of the old notes endorsed by him. He thus executes the trust, and satisfies the object of the deed to him in a way that enures entirely to the benefit of the debtors and those claiming under them. Thus, the Johns, who might have been entirely and legally deprived of their easement by an absolute sale, were enabled to enjoy it as long as they had any occasion for it, for they failed and broke up about the year 1817, and Walter Smith did not sell under the deed to him until the year 1824. We think it clear, that the greater power included the less, and Templeman might have pursued the course he did on his own responsibility. But, besides that, he had the concurrence of both debtors and creditor. The equity of redemption, *i. e.*, the entire equitable *estate*, belonged to the Lowndes, and they owed the debt. They surely could consent to an arrangement to save their property without the concurrence of the Johns, who held a mere easement under

them and in subordination to their title. It is a mistake to speak of this as the creation of a new trust, in antagonism to the intervening rights of the Johns. It is, on the contrary, the *partial*, instead of *exhaustive*, execution of the old trusts, for the benefit of these very parties.

It is objected, that the notes are not shown to have been overdue.

Answer: The notes were payable in fifty-five days from the date of the deed to Templeman, whereas the deed from him was not made for some seven years afterwards.

It is objected, that Templeman's liability as endorser, which was only conditional, was not shown to have been fixed.

Answer: It would seem absurd to require one making title through said deed, nearly seventy years after its date, to prove by parol, presentment, and protest of the notes, as if suit were brought on *them*. But the deed empowers Templeman to sell to pay the notes, *if not taken up by the drawers*, without reference to his personal liability through demand and notice, which may have been waived.

It is objected, that the notes were satisfied and the trusts discharged before Templeman executed his deed to Walter Smith, and that therefore it was unauthorized.

Answer: The deed recites the whole agreement between Templeman, the Lowndes, and the Johns, and is expressed to be *in consideration of the premises*. The release of Templeman was the consideration of the deed, and,

vice versa, the execution of the deed was the consideration of the release. There is no evidence of the arrangement except in the deed, which clearly shows it all to be one and the same transaction.

COX & DAVIDGE,
For Defendant in Error.